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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. [redacted] 19

UNITED STATES OF AMERICA,
Appellees,

vs.

CHARLES PAUL, Director of Agriculture of the State of California and STANLEY MOSK, Attorney General, State of California,
Appellants.

On Appeal From the United States District Court for the Northern District of California, Southern Division

APPELLANTS' JURISDICTIONAL STATEMENT

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Appellants.

On Appeal From the United States District Court for the Northern District of California, Southern Division

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JURISDICTIONAL STATEMENT

Appellants appeal from the order of the United States District Court for the Northern District of California, dated and entered March 27, 1961, and from the orders and injunctions dated April 17, 1961, and entered April 18 and 19, 1961, permanently enjoining California officials from enforcing the California milk stabilization act against dairy farmers

and distributors with respect to milk sold to the United States at Castle and Travis Air Force Bases (action #39073), and the Oakland Army Terminal (action #39030). This statement is submitted to show that the Supreme Court of the United States has jurisdiction of the appeals and that a substantial question is presented.

OPINION BELOW

The opinion of the District Court for the Northern District of California, Southern Division, is reported in 190 F. Supp. 645. Copies of the opinion, order regarding findings, and the judgments are attached hereto as Appendix "A".

JURISDICTION

These suits were brought under 28 U.S.C. 1331 and 1345 to enjoin the enforcement of the California milk stabilization act (Ch. 17, Div. 6, Calif. Agr. Code), as unconstitutional. The permanent injunctions of the three judge District Court were entered on April 18 and 19, 1961, and notice of appeal to this Court was filed in that Court on April 26, 1961. By Order entered June 7, 1961, the District Court extended appellant's time for docketing the appeals and filing the record on appeal with the Clerk of the United States Supreme Court to and including July 24, 1961. Appendix p. 67.

Since appellee's complaints sought injunctions against enforcement of the state statute on grounds of federal unconstitutionality, the actions were re-

quired to be heard by a three-judge District Court under 28 U.S.C. 2281, and this Court has jurisdiction of these direct appeals under 28 U.S.C. 1253.

Florida Lime Growers v. *Jacobsen*, 362 U.S. 73, 74-75 (1960).

California Comm'n v. *United States*, 355 U.S. 534, 536 (1958).

James v. *Dravo Contracting Co.*, 302 U.S. 134, 138 (1932).

QUESTIONS PRESENTED

1. Whether enforcement of the provisions of the California milk stabilization act authorizing the establishment by the State Director of Agriculture of minimum prices at which dairy farmers may sell and distributors may purchase milk conflicts with the Armed Services Procurement Act of 1947.
2. Whether enforcement of the provisions of the California milk stabilization act authorizing the establishment by the State Director of Agriculture of minimum prices at which distributors may sell milk conflicts with the Armed Services Procurement Act of 1947.
3. Whether enforcement of the provisions of the California milk stabilization act against distributors or dairy farmers whose milk is sold to the United States at three particular military installations is constitutional.
4. Whether the District Court erred in permanently enjoining enforcement of the California milk stabilization act as unconstitutional without trial and

on motions for preliminary injunction (Action No. 39030) and for summary judgment (Action No. 39073) where the pleadings and affidavits raised issues of material facts.

5. Whether the District Court erred in failing to abstain from final decision pending construction by the California Supreme Court of the California milk stabilization act and California statutes relating to the acquisition of land and jurisdiction by the United States, and in enjoining appellants from proceeding in pending state court actions.

STATUTES INVOLVED

California statutes:

California milk stabilization act, Chapter 17, Division 6, Agricultural Code; Section 34, 1872 Political Code, as amended by Statutes of 1937, Chapter 710, page 2231 (Sec. 111, Gov. C); Statutes of 1897, Chapter 56, page 51 (Sec. 114, Gov. C); Section 113, Government Code, as amended Statutes 1947, Chapter 1532, page 3164; Section 126, Government Code, as amended Statutes 1947, Chapter 1532, page 3163.

Federal statutes:

Constitution, Article I; Section 8, Clause 17; Armed Services Procurement Act of 1947, 62 Stat. 21, 10 U.S.C. 2301 et seq.; Lanham Act, 54 Stat. 1125; Section 355 Revised Statutes, as amended, Act of October 9, 1940, 54 Stat. 1083.

Copies of these statutes are set forth in Appendix B hereto.

STATEMENT

The California milk stabilization act, Cal. Agr. Code, Div. 6, Ch. 17, was enacted in 1935 to regulate California's dairy industry. Pursuant to this act, the Director of Agriculture has established (1) minimum prices at which dairy farmers may sell and distributors may purchase milk, and (2) minimum prices at which distributors may sell milk.

In early 1960 the Director of Agriculture brought several actions against milk distributors, charging some with purchasing milk from dairy farmers at prices below the established minimum prices,[1] and some with selling milk at prices below the established minimum prices.[2] The ultimate purchaser of the milk was in most instances the United States.

The United States then brought the present actions in the United States District Court for the Northern District of California, Southern Division, to restrain the Director of Agriculture and the

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[1] *Warne* v. *Milk Producers Assn.*, Stanislaus County Superior Court No. 69395, R 921.

Jacobsen v. *Superior Milk Producers Assn.*, Los Angeles County Superior Court No. 734400, R 934.

Warne v. *Challenge Cream & Butter Assn.*, Los Angeles County Superior Court No. 732752, R 945.

[2] *Warne* v. *Milk Producers Assn.*, Merced County Superior Court No. 28301; Judgment for plaintiff entered Aug. 11, 1960, finding Castle Air Force Base to be within territorial jurisdiction of California; now on appeal to District Court of Appeal, California Third Appellate District, No. 10185, R 704, 831-831A, 964.

Warne v. *Milk Producers Assn.*, Alameda County Superior Court No. 304730, R 100.

Attorney General of the State of California from enforcing the California milk stabilization act with respect to milk ultimately purchased by the United States at Oakland Army Terminal, Travis Air Force Base, and Castle Air Force Base. The three judge District Court issued the requested injunctions on two grounds. It held that the California milk stabilization act conflicts with the Armed Services Procurement Act of 1947, 62 Stat. 21, and that the United States had acquired exclusive legislative jurisdiction over these bases.

By order entered in both actions March 27, 1961, the Court below adopted its memorandum decision entered November 29, 1960, as sufficient to constitute its findings of fact and conclusions of law. Appendix p. 61. Appellants assert that the record flatly contradicts these findings in material respects. See infra p. 24.

THE QUESTIONS ARE SUBSTANTIAL

I. The Questions are Important to States Having Milk Stabilization Statutes.

The legislative objective of the California statute is to eliminate destructive and unfair economic practices, and to insure to producers the necessary costs of production. *In re Willing*, 12 Cal. 2d 591, 594.

Twenty-two states have enacted milk stabilization statutes similar to California's.[3] The authority of these states to protect the distributor and the dairy farmer from destructive price wars carried on between distributors competing for contracts with federal military installations hinges upon a determination of the validity of the California enactment.

Farmers whose milk is sold by distributors to the United States had been receiving $5.19 per hundredweight of milk; since the District Court's decision, returns to dairy farmers have dropped to a low of $2.75 per hundredweight. R 831, 857-859. These returns are below the cost of production and thereby threaten a dairy farm investment within California of approximately one billion dollars. R 854, 857. These below cost sales of approximately thirty million gallons of fresh milk per year (6% of total California sales) will cause dairy farmer losses in excess of $6,900,000.00 annually. R 324, 419, 860. These dairy farmer losses are not equally shared, but are borne by those farmers who sell to distributors with federal milk contracts. R 857. This unjust discrimination

[3] Citations to the state statutes are attached hereto as Appendix C.

undermines the effectiveness of the California milk stabilization act. R 860. Retail grocery stores are discriminated against since the price which they pay for the milk at wholesale (e.g. 20.12¢ qt.) is higher than the retail sales price at the commissary (e.g. 12¢ qt.). R 805, 862. These discriminations violate the general principle that the beneficiaries of federal rights are not to have a privileged position over others in their relations with the states. See *Board of Comm'rs.* v. *United States*, 308 U.S. 343, 352 (1939).

II. The District Court Injunction Extends Immunity From State Regulation Beyond Existing Precedents.

The District Court in this case enjoined the defendant state officers from enforcing with respect to milk purchased by the United States:

> "either the state minimum producer price, [or] wholesale price . . . regulations promulgated by the Director of Agriculture pursuant to the California Milk Stabilization Act." Appendix pp. 64 and 66.

This sweeping injunction carries the immunity from state regulation beyond persons who contract with the United States to include the supplier of those persons.

In issuing this injunction, the District Court abandoned the careful reasoning of this Court in *Pacific Coast Dairy* v. *Dept.*, 318 U.S. 285 (1943). There it was held that the State could not punish, directly or indirectly, a distributor for selling milk to the United States at prices below the state minimum prices if

the sale occurred on an area (Moffett Field) subject to exclusive federal jurisdiction. In the present actions the District Court held that the State may not punish dairy farmers for selling or distributors for purchasing milk below the state minimum prices, even though these sales obviously occur outside the areas (the three bases) claimed subject to exclusive federal jurisdiction.

This expansion by the District Court of an immunity from state law of sales occurring within a federal enclave to prior sales occurring outside the enclave is without precedent. Yet the opinion of the District Court does not even mention this issue.

III. The District Court Decision Conflicts With Penn Dairies, Inc. v. Milk Control Comm'n 318 U.S. 261.

The District Court held that the California milk stabilization act as applied, conflicted with the paramount Armed Services Procurement Act of 1947, 55 Stat. 22. This holding conflicts with *Penn Dairies, Inc.* v. *Milk Control Comm'n*, 318 U.S. 261 (1943), in which this Court held that the Pennsylvania minimum wholesale milk price regulations, similar to the California wholesale regulations, did not conflict with the Federal defense procurement statutes and regulations.

The District Court declined to follow the *Penn Dairies* case, relying instead on *California Comm'n* v. *United States*, 355 U.S. 534 (1958). The court said:

"We conclude, therefore, that even if the *Penn Dairies* case has not been in effect overruled by

the *Public Utilities* case, it is inapplicable here because the California Milk Stabilization Act "*places a prohibition on the Federal Government*" within the meaning of the *Public Utilities* case, and, therefore, so conflicts with federal procurement statutes and policy as to be invalid under the Supremacy Clause, Art. VI, Sec. 2." (Emphasis added). *United States* v. *Warne*, 190 F. Supp. 645, at 657. Appendix p. 54.

The District Court attempted to distinguish *Penn Dairies* by construing the California milk stabilization act as applying to federal procurement officers. Yet California's highest court declared in *Pacific Coast Dairy* v. *Dept.* that "the act regulates not the army but the distributors." 19 Cal. 2d 818, 830, rev'd on other grounds, 318 U.S. 285 (1943).

The trial court relied solely upon *California Comm'n* v. *United States*, 355 U.S. 534 (1958), affirming 141 F.Supp. 168 (N.D. Cal., S.D. 1956), in which California's proposed utility rate regulation was determined to impose an unreasonable burden on the operation of the federal government and conflict with federal procurement regulation. But the trial court in the *California Comm'n* case had found that the proposed utility rate regulation would unduly delay military shipments, render procurement operations an administrative morass, and endanger national security by forcing disclosure of the contents of military shipments. California's milk price regulation merely necessitates the awarding of procurement contracts on a rotation basis when bids are identical and

increases in a non-discriminatory manner the cost of operating the federal government. 32 C.F.R. 2.406-4 (award of bid by lot).

This Court in *Penn Dairies*, at 272, concluded "that while these [procurement] statutes direct government officials to invite competitive bidding . . . . and also require them to accept the lowest responsible bid . . ., they do not purport to set aside local price regulations. . . ." When the procurement statutes were codified in 1947, Congress evinced no intention to change the result of *Penn Dairies*.[4]

In their brief on the merits, appellants will urge that Penn Dairies and the present case should be further distinguished from California Comm'n. because of the greater disruptive effect of federal immunity on state milk stabilization laws and the minimal impact of such enactments on federal procurement practices.

IV. The Decision Conflicts With Congressional Policy.

In striking down the California milk stabilization act, as applied, the District Court withdrew state protection from the dairy farmer, a class of persons whose welfare has been expressly considered by Congress. Section 204(a), of the Agricultural Act of 1954, 68 Stat. 899, declares:

[4] The Armed Services Procurement Act of 1947, 55 Stat. 22, codified the procurement statutes without substantive change in effect at the time of the *Penn Dairies* decision. See House Report #109, 80th Cong., 1st Sess., p. 6. No material changes have been found in the current procurement regulations as compared to those considered in the *Penn Dairies* case.

> "It is the policy of Congress to assure a stabilized annual production of adequate supplies of milk and dairy products . . . and to stabilize the economy of dairy farmers at a level which will provide a fair return for their labor and investment when compared with the cost of things that farmers buy."[5]

There is no indication that implementation of this policy was to be confined to the federal government. No conflict with state law is present since the purpose of the California statute is to afford a measure of economic security to dairy farmers in the interest of protecting the public milk supply. *In re Willing*, 12 Cal. 2d 591, 594.

V. The Decision Is Inconsistent With Decisions of This Court Sustaining State Taxation And Safety Regulation Of Contractors With The Federal Government.

This judgment of the District Court also goes beyond the precedents which recognized that state laws may impinge on contractors with the United States where the impact upon the government is solely economic, is non-discriminatory, and is merely reflected in increased costs.[6]

[5] This policy is implemented by subsidizing the consumption of fresh milk by school children. National School Lunch Act, 60 Stat. 230; Act of July 9, 1958, 72 Stat. 276. The allocation to California is approximately twelve and one-half million dollars annually. School Lunch Program, California. Superintendent of Public Instruction, August 1, 1960, p. 1.

[6] 70% of total volume is purchased for resale through commissaries, and any increase in costs would be passed on to the commissary patron. Section 513, Department of Defense Appropriation Act, 1961, 74 Stat. 330, 352. R 805, 814, 816-817. 30% of total volume is purchased with appropriated monies for troop issue. R 814, 816-817.

This concept has been used in sustaining nondiscriminatory state taxes on federal contractors. *City of Detroit* v. *Murray Corp.*, 355 U.S. 489 (1958), (privilege tax); *Smith* v. *Davis*, 323 U.S. 111 (1944) (property tax on open account); *Curry* v. *United States*, 314 U.S. 14 (1941), (sales tax); *Alabama* v. *King Boozer*, 314 U.S. 1 (1941) (sales tax); *James* v. *Dravo Contracting Co.*, 302 U.S. 134 (1937) (gross receipts tax); *Offutt Housing Co.* v. *Sarpy County*, 351 U.S. 253 (1956) (personal property tax on area located within federal jurisdiction). See 32 C.F.R. 12.103 establishing policy that contractors with the government cooperate "to the fullest extent possible" with state agencies responsible for enforcing safety, health and sanitation, maximum hours, minimum wages, equal pay for women, child and convict labor laws.

VI. Absent Conflict, the California Milk Stabilization Act was Assimilated as Federal Law on the Military Installations in Question.

Absent conflict with federal statute, the laws of the state existing at the time of the surrender of sovereignty are carried over into the law of the federal area. This assimilation of state law assures that the area involved will continue to have a developed legal system. *Stewart & Co.* v. *Sadrakula*, 309 U.S. 94, 99 (1940); *Chicago, R.I. & P.R. Co.* v. *McGlinn*, 114 U.S. 542, 546 (1885). The application of this rule to state regulatory acts was recognized in *Pacific Coast Dairy* v. *Dept.*, 318 U.S. 285, the Court saying:

> "When the federal government acquired the tract [Moffett Field], local law not inconsistent with federal policy remained in force until altered by national legislation." 318 U.S. 285, 294.

Assimilation was found inapplicable however, because the California milk stabilization act was adopted after the transfer of sovereignty. In this case, this reverse is true. The transfers of sovereignty found by the District Court occurred subsequent to 1941, long after the 1935 enactment of the milk stabilization act. California Statutes of 1935, Chapter 241, page 922, as amended by Statutes of 1937, Chapter 3, page 42. Appendix p. 67. It follows that, absent conflict, the California act remained in force in the three enclaves directly in question and that California may apply its minimum milk price regulations to the distributor with respect to the sale of milk occurring on the military bases here involved.

VII. The District Court Has Erroneously Decided Important Questions With Respect to the Application of California Law Over Its Many Federal Installations.

There are three types of state statutes dealing with state-federal jurisdiction over federal areas within state borders. They are:

(1) Statutes which grant consent to the United States to acquire land within a state.

(2) Statutes which make a tender of territorial jurisdiction, partial or exclusive, of federally owned land to the United States.

(3) Statutes which both consent to the acquisition of land, and grant territorial jurisdiction, partial or exclusive, to the United States over the land so purchased with consent.

The determination of the jurisdictional status of the military installations here involved hinges on the construction of California statutes coming within these categories.[7]

In *Pacific Coast Dairy* v. *Dept.*, 318 U.S. 285, 293, the court and the parties assumed, without considering the language of the state statutes, that the United States had acquired exclusive jurisdiction over the military base there involved. In this appeal, appellants will contend that the state exercises jurisdiction over the federal installations here in question.

A. The District Court below interpreted the California statute (enacted in 1872) which granted state consent to the federal purchase of military land as having transferred exclusive jurisdiction to the United States over the Travis and Castle Air Force Bases. Appendix, p. 42. This statute, Section 34, 1872, Calif. Pol. C. provided in part:

"The Legislature consents to the purchase or condemnation by the United States of any tract of land within this State for the purpose of erecting forts,

[7] The decision here will also largely determine the jurisdictional status of the 280 military installations on four million acres of land in California. Inventory Report, U.S. General Services Administration, November 10, 1959; *R* 158.

magazines, arsenals, dockyards, and other needful buildings . . ."[8]

Appellants contend that this 1872 statute in granting consent to federal acquisition of land did not constitute a cession of territory since it contained no words of cession. Instead, The California Legislature intended to give the consent to purchase land required by Constitution, Article I, section 8 clause 17. "It would seem to have been the opinion of the framers of the Constitution that, without the consent of the states, the new government would not be able to acquire lands within them; . . ." *Fort Leavenworth R. R. Co. v. Lowe*, 114 U.S. 525, 530. See debate excerpts, 1787 Constitutional Convention, Appendix p. 136. This consent to purchase, when given, makes the area involved subject to the power in Congress to exercise supremacy jurisdiction thereover. But this grant of supremacy power is not per se exclusory and becomes effective only as Congress chooses to avail itself of it. State law remains in force until controlling federal statute is enacted. See *Offutt Housing Co. v. Sarpy County*, 351 U.S. 253, 260. This is the construction given to the remaining grants of power in Constitution, Article I. *Parker v. Brown*, 317 U.S. 341, 361-363 (1943; commerce clause). The distinction drawn here is between a state statute which subjects land within state borders to such federal supremacy jurisdiction as Congress

[8] Section 34, 1872 California Political Code, as amended by California Statutes of 1939, Chapter 710, page 2231, together with its legislative history is set out in the Appendix, page 104.

sees fit to exercise, and a statute making a transfer of territorial jurisdiction. Congress recognized this distinction in retroceding "jurisdiction and sovereignty" over a tract of land in the District of Columbia to the State of Virginia, but reserving the power to "exercise exclusive legislation" over the area while in government possession. Act of February 23, 1927, 44 Stat. 1176. It is noted that, exclusive of the Armed Services Procurement Act of 1947, no contention is made by appellee that federal statute conflicts with the California milk act as applied to sales of milk at wholesale occurring on the Castle and Travis Air Force Bases.

The language of the 1872 statute is contrasted with that of California's statutes of 1897, Chapter 56, page 51, which appellants concede is a cession statute. This statute provided:

> "State of California hereby cedes to the United States of America exclusive jurisdiction over all lands . . . which may hereafter be . . . conveyed for military purposes; provided that a sufficient description by metes and bounds and a map or plat of such lands be filed in the proper office of record in the county in which the same are situated: . . ."[9]

Having determined that the 1872 statute transferred sovereignty to the United States, the District Court did not consider the effect of the failure of the United States to file land descriptions and plats with

[9] Statutes of 1897, Chapter 56, page 51, together with its legislative history, is set out in the Appendix, p. 105.

the appropriate county recorder as required by the 1897 statute. R 424-425; 428-429; 814, 816. These filing and land description requirements have been held to constitute a condition precedent to the transfer of sovereignty. *United States* v. *Watkins*, 22 F.2d 437, 440, (D.C., N. D. Calif. 1927). The fulfillment of the condition insures that state and federal officials, and the general public, would have notice of exactly where the parcels of land within federal jurisdiction are located. *Valley County* v. *Thomas*, 109 Mont. 345, 97 Pac.2d 345, 360, (the Montana cession statute "must not be construed as to make possible a no-man's land within the boundaries of the state"). Accord: *Pothier* v. *Rodman*, 291 F. 311, 319-21 (1st Cir. 1923), rev'd on a different ground, 264 U.S. 399; *Gill* v. *State*, 141 Tenn. 379, 210 S.W. 637, 638 (1919); *State* v. *Mendez*, 57 Nev. 192, 61 Pac.2d 300, 303 (1936); *Six Cos.* v. *De Vinney*, 2 F.Supp. 693, 696 (D.C. Nev. 1933)[10]

While there is no California decision which considers whether the 1897 "cession" statute qualified the earlier 1872 "consent" statute, this Court in a similar context concluded that a West Virginia 1919 "cession" statute qualified the earlier 1881 "consent" statute. *James* v. *Dravo Contracting Co.*, 302 U.S. 134, 143 (1937); Sec. 4, Ch. 20, 1881 Acts of W.

[10] We are informed that the Judge Advocate General, Department of the Army, has expressed the opinion that letters accepting jurisdiction over military lands in California sent to the state Governor were insufficient because unaccompanied by the filing of maps and metes and bounds descriptions as required by the 1897 statute. Opinion SPJGR 1945/9595, dated October 23, 1945; Opinion JAGR 1954/2153, dated April 9, 1954.

Virginia; Sec. 19, 1919 Code of W. Virginia; both statutes codified into Sec. 3, Ch. 1, Art. I, 1931 Code of W. Virginia. Since the government failed to comply with the filing and land description requirements of the 1897 statutes, appellants assert that California continues to exercise jurisdiction over the Castle and Travis Air Force Bases. R 836-D.

B. Federal statute provides "it shall be conclusively presumed" that jurisdiction has not been accepted by the United States unless exclusive or partial jurisdiction were accepted "by filing a notice of such acceptance with the Governor of such State or in such manner as may be prescribed by the laws of the State where such lands are situated." Section 355, 1875 Revised Statutes, as amended, Act of October 9, 1940, 54 Stat. 1083.

The United States in its brief filed with the Court in *Adams* v. *United States*, October term, 1942, #889, pp. 16-18 [319 US 312], after acknowledging the Department of Justice was the draftsman stated that:

> ". . . all confusion should be eliminated by requiring an unequivocal act of acceptance, such as the filing of a notification with the Governor of the state which had already been required by some state statutes [11] or by compliance with any equivalent procedure which the states might provide, such as the recordation of maps or plats." [12]

[11] Article 1639, 1849 Laws of Texas, required the filing of a metes and bounds description of the enclave with the Governor as a condition to the cession of jurisdiction.

[12] State cession statutes requiring the recordation of metes and bounds description, and a plat, of the enclave include: Sec. 20, 1917 Statutes of Washington. *Pothier* v. *Rodman* (1st Cir.),

In the light of this legislative history, appellants will contend that the District Court erred in finding that the war department letters to the Governor of California accepting jurisdiction over "all lands acquired . . . for military purposes within the State of California" transferred exclusive jurisdiction over Castle and Travis Air Force Bases, since the filing and lands descriptions requirements of state law which were incorporated into the federal statute, were not met. R 320, 424, 428-429, 448.

C. The only area at Castle Air Force Base claimed by appellee to be within federal jurisdiction is an 18.36 acre tract of land (denoted Tract A) acquired for civilian housing pursuant to the Lanham Act, 54 Stat. 1125. R 191. Section 10 of this Act provided that "notwithstanding any other provision of law" the acquisition of real property under the Act shall not deprive the State of civil or criminal jurisdiction over the property. Appellants assert that the language "notwithstanding any other provision of law" was intended to qualify the authority given in the earlier Act of October 9, 1940, 54 Stat. 1083, which authorized the government to accept jurisdiction by complying with the appropriate state cession law filing requirements. Congress in enacting section 10 intended to assure to residents of Lanham housing tracts the bene-

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291 Fed. 311, 320, rev'd on other grounds, 264 U.S. 399; Sec. 1, Ch. 110, 1895 Acts of Tennessee, *Gill* v. *State*, 141 Tenn. 379, 210 S.W. 632, 638; Sec. 2, Ch. 23, 1921 Statutes of Nevada, *State* v. *Mendez*, 57 Nev. 192, 61 P. 2d 300, 303; Calif. Stats. 1897, Ch. 56, p. 51, *United States* v. *Watkins*, 22 Fed. 2d 437, 440.

fits of state citizenship, e.g. the right to vote. *Johnson* v. *Morrill*, 20 Cal. 2d 446.

The District Court, though, held section 10 of the Lanham Act inapplicable because administrative control of the housing tract was transferred from the Federal Works Administrator to the Department of War, effective September 1, 1942, pursuant to the Act of January 21, 1942, 56 Stat. 11, 12. R. p. 220. The original Lanham Act provided that defense housing projects should "be disposed of as promptly as may be advantageous under the circumstances." Lanham Act, 54 Stat. 1125, 1127. The 1942 amendment, relied upon by the District Court, added an exception to this disposal policy by authorizing the Federal Works Administrator to transfer administrative control of the housing projects to the War or Navy Departments who could then maintain these housing projects as permanent installations. Act of January 21, 1942, 56 Stat. 11, 12. Neither the language of the statute authorizing the transfer of administrative control, nor its legislative history, show a Congressional intent to supersede the restrictions of section 10. House Report No. 1457, 77th Cong., 1st Sess.; Senate Report No. 918, 77th Cong., 1st Sess.; House Report No. 1589, 77th Cong., 2nd Sess.; 87th Cong. Rec. 9276-9281; 9675-9699; 9832-9836; 9997-9999; 10028-10031. The District Court, therefore, erred in finding that the United States acquired exclusive jurisdiction over Tract A at Castle Air Force Base.

D. Appellants on this appeal will also assert that the Oakland Army Terminal, County of Alameda, California, lies within state criminal jurisdiction. On July 5, 1950, Secretary of the Army Frank Pace, Jr., by letter to the California State Lands Commission gave notice that: "The Department of the Army, in behalf of the United States of America, hereby assents to acceptance of federal jurisdiction over the subject land: . . . *upon and subject to each and all of the conditions and reservations prescribed in said Government Code, section 126, ...*" (emphasis added). R 443.[13]

The State Lands Commission on October 5, 1950, adopted a resolution that the acquisition of the land comprising the Oakland Army Terminal "is in the interest of the State." R *98*.

At the time of the resolution of the State Commission, section 126, Government Code (Stats. 1947, Ch. 1532, p. 3163), provided:

> "Notwithstanding any other provision of law, general or special, the Legislature of California consents to the acquisition by the United States of land within this State upon and subject to each and all of the following express conditions and reservations, *in addition to any other conditions or reservations prescribed by law;*" (Emphasis added).[14]

[13] The text of section 126, Government Code, as amended by Stats. 1947, Ch. 1532, p. 3163, is set forth in Appendix p. 107.

[14] Other reservations of state jurisdiction were the power of taxation, and the civil and political rights of the residents on the enclave, Sec. 126, Gov. C., Appendix p. 108.

Appellants assert that this reference to "other conditions or reservations prescribed by law" incorporates by reference to the provisions of companion section 113, Government Code (Stats. 1947, Ch. 1532, p. 3163), which provided:

> "The State reserves the administration of the criminal laws of the State with respect to any land over which any jurisdiction has been or may be *ceded* or *conveyed* to the United States, during the time the United States is the owner thereof" (emphasis added).

Both sections 113 and 126, Government Code, were amended by the same bill in the 1947 session of the California Legislature (Senate Bill 656, 1947 Legis. Sess.; Stats. 1947, Ch. 1532, p. 3163).[15] On this appeal appellants will contend that in enacting sections 113 and 126, Government Code, the Legislature intended to reserve state criminal jurisdiction over lands coming within the scope of said section 126. No authority is cited by the District Court for its contrary conclusion. This reservation of criminal jurisdiction would bring the milk sales transactions occurring on the Oakland Army Terminal within the penal provisions of the California Milk Stabilization Act, Sec. 4361, 4410,

[15] As originally drafted Senate Bill 656 amended only Section 126, Government Code, i.e., transferring administration from Board of Equalization to State Lands Commission. The Bill was amended on the floor of the state Senate, adding language amending section 113 to "reserve the administration of the criminal law of the state "with respect to any land . . . ceded or conveyed to the United States . . ." California Senate Journal, 1947, Vol. 2, pp. 2166-2167.

Agr. C. Compare *Penn Dairies* v. *Milk Control Comm'n.*, 318 U.S. 261.

VIII. District Court Procedural Errors

A. The District Court erred in proceeding to enter final judgments without trial or the taking of evidence. In action No. 39073 final judgment was entered on appellees' motion for summary judgment. R 114, 188. In action No. 39030 final judgment was entered on the trial court's own motion. Appendix p. 29. In both actions 39030 and 39073 the material allegations of the complaints were denied in appellants' answers. 832; 836-A. In particular, appellees' allegations that the United States had acquired exclusive jurisdiction over the particular bases in question[18] and appellees' allegations of monetary loss were denied. R 832; 836-A. It has been held that similar allegations and denials presented triable issues of fact. See *Colorado* v. *Toll*, 268 U.S. 228, 231-232 (1925); *Beal* v. *Missouri Pacific R. Co.*, 312 U.S. 45, 50-51 (1941). It is noted that the statements in appellees' affidavits were denied by appellants on lack of information and belief. R. 432.

Appellants' quarrel with the findings of the District Court. The trial court found that title to the land at the Travis Air Force Base was acquired between December 1942 and March 1943. Appendix p. 41.

[18] For example, the California State Lands Commission by resolution gave state consent to the federal acquisition of land at the Oakland Army Terminal. R. 98. Appellants deny that it was intended that this resolution should constitute a cession of exclusive jurisdiction.

The record shows to the contrary that the land was acquired from September 4, 1942 to June 17, 1958. R 978-990. This error is material since the United States has never given notice of acceptance of jurisdiction over the lands acquired at Travis since January 3, 1944, and such lands must therefore be within state sovereignty. R 320, 448 *Adams* v. *United States*, 319 U.S. 312, 313 (1943).

Similarly, the District Court found that title to the land at the Oakland Army Terminal was acquired in 1950. Appendix, p. 35. The record is contrary, and shows that the base is partially leased, and that the remaining portion was acquired in 1941, 1942 and 1943. R 94-99; 818. These errors are material since the United States has never attempted to acquire jurisdiction over leased land. R 320, 448. See *Penn. Dairies* v. *Milk Control Comm'n.*, 318 U.S. 261, 267. The time of acquisition is material since different state statutes were in effect in the earlier period 1941-1943.

The findings recite that all deliveries of milk occur on tract A, Castle Air Force Base (acquired July 17, 1943, R 424), while the record shows that milk is also received on parcel 12 on said base (acquired March 17, 1947). R 427, 813. This error is material since no notice of acceptance of jurisdiction has been given for parcel 12, and it therefore lies within state sovereignty. Other errors are present in the findings and their discussion is reserved in appellants' brief on the merits. It is to be noted that appellants'

efforts to obtain discovery with which to oppose the appellees' motion for summary judgment was denied by order entered July 1, 1960. R 629, docket entry in #39030, p. ii; docket entry in #39073, p. ii. Both the facts and the law in this case are complicated and disputed. This case should be decided only after a trial. *Kennedy* v. *Silas Mason Co.*, 334 U.S. 249, 256-257 (1948); *Eccles* v. *Peoples Bank*, 333 U.S. 426, 434 (1947).

B. In action No. 39030 the District Court entered permanent injunction on its own motion, since appellees had filed only the one motion for preliminary injunction. R 12. The issue before the trial court was whether enforcement of the state act would reflect irreparable injury to appellee pending final hearing, not whether the statute was unconstitutional. *Mayo* v. *Canning Co.*, 309 U.S. 310, 316 (1940). This error is prejudicial if the District Court erred in deciding the companion case No. 39073 on motion for summary judgment.

C. The District Court, by injunction, restrained the defendant state officers from proceeding in pending state court proceedings in which state interpretation of state statutes could be obtained. In one of the state suits, *Warne* v. *Milk Producers Association*, Merced County Superior Court No. 28301, on appeal District Court of Appeal, Third Appellate District, Nos. 9948 and 10185, the state court ruled that Castle Air Force Base lay within state sovereignty. R 831-831A. The United States appeared as an amicus curiae R 831 A.

No question is raised as to the jurisdiction of the District Court; appellants' quarrel is with the manner of its exercise. The acts appellants complained of consisted of the orderly filing of actions in the state courts. In these state court actions the participation of the United States was welcomed. Under these circumstances the District Court erred in enjoining the continuance of the then pending state actions to the irreparable injury of the dairy farmers who supplied milk to contractors with the United States. See Ex parte Young, 209 U.S. 123, 162 (1908); "but the Federal Court cannot, of course, interfere in a case where the proceedings were already pending in a state court." Compare *Wilson* v. *Schnettler*, 365 U.S. 381, 384 (1961).

D. As noted hereinabove, the California milk stabilization act was construed by the District Court as placing a prohibition on the federal government. This construction is contrary to that of the highest state court. *Pacific Coast Dairy* v. *Dept. of Agriculture*, 19 Cal. 2d 818, 830, rev'd on another ground, 318 U.S. 285. Further, section 34, 1872 Political Code, as amended, and its relation to Statutes of 1897, Chapter 56, page 51, and section 126, Government Code, have never been construed by the California courts. Their construction by the state courts in the light of appellee's claim of constitutional immunity, and claim of exclusive jurisdiction, may moot or change the posture in this Court of the constitutional issues posed by appellee's complaint. The District Court therefore erred

in not abstaining from exercising jurisdiction pending clarifying construction of the state enactments in the state courts *Leiter Minerals, Inc.* v. *United States*, 352 U.S. 220, 228-230 (1957). Compare *Nolan* v. *Transocean Air Lines*, 365 U.S. 293 (1961).

CONCLUSION

It is submitted that the questions presented by this appeal are substantial, and are important to state-federal relations, and call for resolution by this Court.

Respectfully submitted,

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APPENDIX A

[Title of Court Omitted]

UNITED STATES OF AMERICA, *Plaintiff*, vs. WILLIAM E. WARNE, Director of Agriculture of the State of California, and STANLEY MOSK, Attorney General, State of California, *Defendants*.	Nos. 39030 39073 Memorandum Opinion

Before: JERTBERG, Circuit Judge, and HARRIS and SWEIGERT, District Judges

SWEIGERT, District Judge

I. BACKGROUND OF THE CASE

The above two actions have been brought by the United States to determine the applicability of the California Milk Stabilization Law (Cal. Agricultural Code, Div. 6, Ch. 17, Secs. 4200 to 4420) to purchases made by the United States, through U. S. Army and Air Force procurement officers, of milk and milk products from local producers and distributors for on-base mess hall consumption and on-base commissary sales at three federal military installations located within the territorial limits of California.

Civil Action No. 39030, involving the Oakland Army Terminal, is before this Court on plaintiff's motion for a preliminary injunction. Civil Action No. 39073, involving Travis Air Force Base (Count I), and Castle Air Force Base (Count II), is before the Court on plaintiff's motion for summary judgment. Because these actions test the constitutionality of the State milk law as applied to the federal government, the

present three judge court was assembled, pursuant to 28 U.S.C. Sections 2282 and 2284.

Two additional actions, Civil Action No. 39052, involving Camp Pendleton, and Civil Action No. 39059, involving Mather Air Force Base, are on file awaiting determination of these actions.

II. CALIFORNIA MILK STABILIZATION ACT

Briefly, the California Milk Stabilization Act was passed in 1935 to regulate the marketing and distribution of fluid milk and fluid cream. Cal. Agricultural Code Section 4201 declares that such products are necessary articles of food, that the production and maintenance of an adequate supply of healthful milk is vital to the public health and welfare, and that the policy of the State is to promote, foster and encourage the intelligent production and orderly marketing of milk, and to eliminate unfair and destructive trade practices.

To achieve these ends, marketing areas throughout the State were established (Section 4204), to be administered by the Director of Agriculture (Section 4270), whose duty it is to establish minimum milk prices (Sections 4246, 4247, 4281, 4352, 4353), and to license milk distributors within each marketing area (Sections 4244, 4375).

Under provisions of the Act, the Director is also empowered to revoke and suspend licenses for violation of any stabilization and marketing plan (Section 4415) to bring actions to enjoin such violations (Section 4256), and to prosecute actions to recover civil penalties of $500 for each violation (Section 4410)

The California Attorney General is also empowered to enforce the Act, under Article V, Section 21 of the California Constitution, Section 12511 of the Califor-

nia Government Code, and Section 4410, supra, to bring prosecutions for criminal violations of the milk code.

III. PRELIMINARY MATTERS

The defendants, the California Director of Agriculture and the California Attorney General, have filed actions in various State courts, seeking injunctive relief and civil penalties against milk suppliers and distributors who have entered into procurement contract with federal officials at the several military bases, calling for the sale of milk at negotiated prices less than those established under the State Act. (Exhibits 8-11). Defendants have also instituted declaratory judgment actions in this Court against federal procurement officers at Travis Air Force Base, Civil Action No. 39080, seeking a determination of their right to enforce the State law as to milk sales consummated at that base.

The United States contends that these State attempts to enforce the milk act have interfered with the purchase of milk and milk products by the United States at its military installations, over which it claims exclusive legislative jurisdiction, and are in conflict with federal competitive bidding policy and procedures, expressed in Armed Services Procurement Regulations, para. 1-301, 1-302.2, 3-101 and 3.108.1, and Army Procurement Procedure, para. 3-101.

The United States alleges that, being unable to obtain milk and milk products at less than the State minimum price, it has incurred additional operating costs of $15,000 per month on milk purchases at Travis Air Force Base (Rainey's Affidavit of March 8, 1960), $112,457 per year at Castle Air Force Base

(Mann's Affidavit, Attachment H), and $10,000 per month at Oakland Army Terminal. (Complaint, para. 18).

It is the position of the United States that the State milk code may not constitutionally be applied to lands over which the United States has exclusive legislative jurisdiction; further that its enforcement violates the right of the plaintiff to be free from State interference in the exercise of a federal function, under the Supremacy Clause, Art. VI, Clause 2 of the United States Constitution. On these facts, we believe that a justiciable controversy exists. *Florida Lime & Avocado Growers, Inc.* v. *Jacobsen*, 362 U.S. 73 (1960), *California Public Utilities Commission* v. *United States*, 355 U.S. 534 (1958).

Preliminarily, the defendants urge that this Court should abstain from consideration of these cases on the merits, because of the existence of State questions which, if determined by the California State Courts, would render assistance to this Court in the formulation of its decision.

Although a determination of these cases upon the merits depends in part upon the legal effect of certain proceedings taken pursuant to State consent-to-purchase statutes and State cession statutes, the question whether the United States acquired exclusive legislative jurisdiction over the lands comprising the various military reservations under discussion is a federal question arising under Title 28 U.S.C. Sections 1331, 1345. *Silas Mason Co.* v. *Tax Commission*, 302 U.S. 186, 197 (1937).

In *Allegheny County* v. *Frank Mashuda Co.*, 360 U.S. 185 (1959), it was held that a federal district court may not abstain from exercising its jurisdic-

tion where there is no hazard of unnecessarily deciding a federal constitutional question, or of unsettling some delicate balance in the area of federal-state relationships, or of resolving difficult and uncertain issues of State law.

Such factors being absent, we are of the opinion that we should proceed to a consideration of the issues.

IV. THE ISSUES

In *Penn Dairies* v. *Milk Control Commission*, 318 U.S. 261 (1943), the Supreme Court held that the Pennsylvania Milk Control Commission should not be restrained from enforcing a similar milk act or from refusing to license a milk distributor who had sold milk to the United States at a military installation at prices less than the minimum fixed by the Pennsylvania act. In that case, however, the Court noted that the military installation was situated, not on land over which the United States had exclusive jurisdiction, but on land over which the State of Pennsylvania retained its jurisdiction.

In *Pacific Coast Dairy, Inc.* v. *Department of Agriculture*, 318 U.S. 285 (1943), decided the same day, the Court reached a different conclusion, holding that the California Department of Agriculture could not enforce the California milk code by revoking the license of a milk distributor for selling milk to the United States at a military reservation, Moffet Field, over which the United States exercised exclusive jurisdiction, at prices less than the minimum set by State law.

Recognizing that the results reached in the two cases might seem contradictory, the court noted, 318 U.S. at p. 295, that: "in preserving the balance

between national and state power, seemingly inconsequential differences often require diverse results".

In the instant cases, defendants seek to avoid application of the *Pacific Coast Dairy* case to the three military installations here involved upon the ground that these installations are not in fact within the exclusive jurisdiction of the United States, and that, therefore, these cases are to be determined, not under *Pacific Coast Dairy*, but under the rule of *Penn Dairies*.

Defendants contend further, that even if these installations are within the exclusive jurisdiction of the United States, the penal provisions of the California Milk Act were assimilated as law within these federal enclaves under the so-called Assimilative Crimes Act, as amended in 1948, Title 18 U.S.C. Section 13.

Plaintiff contends: First, that the three installations here involved are in fact within the exclusive jurisdiction of the United States.

Secondly, that even if they are not, these cases should not be determined under the rule of the *Penn Dairies* case, supra, because the California Milk Act is in conflict with federal procurement regulations and policy within the rule of *Public Utilities Commission of California* v. *United States*, 355 U.S. 534 (1958), to which we shall refer in due course; and, therefore, that so far as the United States is concerned, the California Act violates the Supremacy Clause of the United States Constitution, Art. VI, Clause 2.

Further, and for this reason, plaintiff contends that the penal provisions of the California Act could not have been assimilated in these enclaves under the Assimilative Crimes Act.

V. THE ISSUE OF EXCLUSIVE JURISDICTION

A. Oakland Army Terminal

The United States alleges, and the record shows without contradiction, that the lands comprising the Oakland Army Terminal were acquired by the United States in 1950 through condemnation proceedings for the purposes set forth in Art. I, Sec. 8, Cl. 17 of the Constitution. (Plaintiff's Memorandum, filed March 30, 1960; and Exhibit 15)

That Constitutional provision reads in pertinent part as follows:

> "The Congress shall have power . . . to exercise exclusive Legislation . . . over all Places purchased by the Consent of the Legislature of the State . . . for the Erection of Forts . . . and other needful Buildings."

At the time of the acquisition of Oakland Army Terminal in 1950, California Government Code, Sec. 126 provided: "Notwithstanding any other provision of law, general or special, the Legislature of California consents to the acquisition by the United States of land within this State upon and subject to each and all of the following express conditions and reservations, in addition to any other conditions or reservations prescribed by law."

Then follow the various express conditions and reservations of the statute: "(a) The acquisition must be for the erection of forts . . . and other needful buildings, or other public purpose within the purview of Clause 17 of Section 8 of Article I of the Constitution of the United States . . .

"(b) The acquisition must be pursuant to and in compliance with the laws of the United States;

(c) The United States must in writing have assented to acceptance of jurisdiction over the land upon and subject to each and all of the conditions and reservations in this section prescribed;

(d) The conditions prescribed in subdivisions (a), (b) and (c) of this section must have been found and declared to have occurred and to exist, by the State Lands Commission, and the Commission must have found and declared that such acquisition is in the interest of the State, certified copies of its orders or resolutions making such findings and declarations to be filed in the office of the Secretary of State, and recorded in the office of the County Recorder of each county in which any part of the land is situate;

(e) In granting this consent, the Legislature and the State reserve jurisdiction on and over the land for the execution of civil process and criminal process in all cases, and the State's entire power of taxation . . . and reserve to all persons residing on such land all civil and political rights, including the right of suffrage, which they might have were this consent not given . . . ."

The records of the California State Lands Commission, on file herein as attachments to Exhibit 1, show that by letter of acceptance from the Secretary of the Army to the California State Lands Commission, dated July 5, 1950, the Department of the Army accepted federal jurisdiction over the subject land in behalf of the United States.

Such acceptance of jurisdiction was made pursuant to the requirements of R. S. §355, 40 U.S.C.A. Section 255, which provides " : . . until the United States has accepted jurisdiction over lands . . . it shall be conclusively presumed that no such jurisdiction has been accepted."

By resolution dated October 5, 1950, the State Lands Commission found "that the conditions prescribed in subdivisions (a), (b) and (c) of section 126 of the Government Code of the State of California had been found to have occurred and to exist, and that such acquisition is in the interests of the State" (Resolution, California State Lands Commission, October 5, 1950, Exhibit 1.)

Certified copies of the Order and Resolution of the State Lands Commission were filed in the office of the Secretary of State and recorded in the office of the County Recorder of Alameda County, where all the land is situated. By letter of October 31, 1950, the State Lands Commission notified the Secretary of the Army that full compliance had been made with Government Code Section 126. (Exhibit 1).

The State of California contends that California Government Code Section 126 operates only as a consent to the acquisition of land by the United States, but not as a transfer of jurisdiction to the United States over the lands.

We are of the opinion, however, that although Sec. 126 contains no express words to that effect, it manifests clearly the intent of the California legislature that it operates to transfer legislative jurisdiction over such lands.

The section makes express reference to land acquisitions for the purposes set forth in the U.S. Constitution, Art. I, Sec. 8, Cl. 17, a provision which deals specifically with the acquisition by the United States of "exclusive legislative jurisdiction", over lands purchased by the United States for such purposes with the consent of the legislature of the State.

Further, Section 126 expressly requires an assent in writing by the United States to "acceptance of jur-

isdiction over the land upon and subject to each and all of the conditions and reservations in this section prescribed."

Further, Sec. 126 makes express "reservations" of State jurisdiction over the land for specific, limited purposes—service of civil and criminal process and the power of taxation. These express reservations of certain limited areas of jurisdiction are consistent only with an intent that jurisdiction would otherwise pass to the United States.

Further, as we shall mention in our discussion of Travis Air Force Base, the Attorney General of California has ruled that the precursor section of the above Government Code sec. 126 (Cal. Pol. Code Sec. 34), which is substantially similar to Government Code Sec. 126, is operative, not only as a mere consent to purchases, but to vest jurisdiction in the United States.

The State of California next contends that, assuming Section 126 is held to operate to transfer legislative jurisdiction, the section's reference to "other conditions or reservations prescribed by law" is in effect a reference to Government Code Section 113, as amended by Stats. 1947, ch. 1532, p. 3164, repealed by Stats. 1955, ch. 1447, p. 2636, which at the time of the acquisition of the lands comprising Oakland Army Terminal provided:

"The State reserves the administration of the criminal law of the State with respect to any land over which any jurisdiction has been or may be ceded or conveyed to the United States, during the time the United States is the owner thereof."

This provision, the State of California argues, reserved the penal provisions of the California Milk

Stabilization Law, e.g., Sections 4361, 4410, from any transfer of jurisdiction.

We are of the opinion, however, that Section 113 is applicable only to lands "ceded" to the United States, as distinguished from lands acquired through purchase or condemnation by the United States with the State's consent—as in the case of these Oakland Army Terminal lands.

The distinction between these two methods of acquisition of jurisdiction by the United States over lands becomes clear in the light of the history of the judicial interpretation of Art. I, Sec. 8, Cl. 17 of the Constitution.

At an early date it was suggested that the only means by which the federal government could acquire jurisdiction from the States over lands was the so-called purchase-by-consent method provided by Art. I, Sec. 8, Cl. 17. See, *United States* v. *Railroad Bridge Company*, C.C.N.D. Ill. 1855, 27 Fed. Cas. pp. 686, 693, No. 16, 114.

However, in *Fort Leavenworth* v. *Lowe*, 114 U.S. 525 (1885), the Supreme Court sustained the validity of Kansas legislation "ceding" to the United States legislative jurisdiction over Fort Leavenworth, situated on lands which the United States had no cause to "purchase", within the meaning of Art. I, Sec. 8, Cl. 17 of the Constitution, because the lands had been possessed by the United States before the admission of Kansas into the Union.

The Court thus recognized a new method, i.e., "cession", by which the United States might acquire jurisdiction over lands where no "purchase" for constitutionally specified purposes was involved, e.g., when the lands had been part of the public domain

and had been reserved from sale, *Fort Leavenworth* v. *Lowe*, supra, or when, although a purchase was involved, the purpose was not one enumerated by Art. I, Sec. 8, Cl. 17 of the Constitution, *Collins* v. *Yosemite Park Co.*, 304 U.S. 518 (1938).

Following the *Fort Leavenworth* decision, a number of States adopted so-called "cession statutes" to supplement their consent-to-purchase statutes. One of these States was California, which in 1891 adopted its cession statutes, Stats. 1891, ch. 181, p. 262, codified into Government Code Section 113, effective August 4, 1943, referred to above; also, Stats. 1897, ch. 56, p. 51, codified into Government Code Section 114, effective August 4, 1943, until repealed by Stats. 1947, ch. 1532, p. 3164, to which we will later refer in our discussion of Travis and Castle Air Force Bases.

The California Attorney General has himself recognized that acquisition by the federal government of exclusive jurisdiction over land by the consent-to-purchase method, provided in Art. I, Sec. 8, Cl. 17, is distinct from the acquisition of exclusive jurisdiction pursuant to these State "cession" statutes. (See, Report of the California Attorney General, *Jurisdiction Over Federal Enclaves in California*, 1958, pp. 3, 42, 72-73; also, 23 Op. Cal. Attorney General 14 (1954).

We are of the opinion, therefore, that Government Code Sec. 113 did not reserve administration of the criminal provisions of the California Milk Stabilization Act over the lands comprising Oakland Army Terminal.

Defendants next contend that, even though exclusive jurisdiction was effectually tendered to the United States, only "partial" jurisdiction was in fact accepted by the United States in the letter of accept-

ance sent by the Secretary of the Army to the California State Lands Commission, dated July 5, 1950, referred to above, wherein it was stated: "The Department of the Army, in behalf of the United States of America, hereby assents to the acceptance of federal jurisdiction over the subject land."

Defendants make the point that the use of the phrase "federal jurisdiction" by the Secretary of the Army and his omission of the phrase "exclusive jurisdiction," a phrase which appeared in previous letters of this kind from the Secretary of War, signifies an intent to accept only "partial" jurisdiction.

We do not agree with this contention. The letter of acceptance from the Secretary of the Army, forwarded pursuant to R.S. §355, 40 U.S.C.A. Section 255, referred to above, accepts federal jurisdiction without qualification. This letter effectively accepted the exclusive jurisdiction contemplated by Art. I, Sec. 8, Cl. 17 of the Constitution.

B. Travis Air Force Base

The United States alleges and the record shows without contradiction that the lands on which Travis Air Force Base is located were acquired by the United States between December, 1942, and March, 1943, through various purchases and condemnations, for military purposes under the provisions of Art. I, Sec. 8, Cl. 17 of the Constitution. (Attachments A and B to LaBuda's Affidavit; and deeds and condemnation awards attached to Exhibits 1, 2, and 3).

California Political Code Section 34, codified into Government Code Section 111, Stats. 1943, ch. 134, p. 1009, repealed by Stats. 1947, ch. 1532, p. 3163, at the time of these acquisitions provided: "The Legislature consents to the purchase or condemnation by the

United States of any tract of land within this State for the purpose of erecting forts . . . and other needful buildings . . . upon the express condition that all civil and criminal process may be served thereon.

On April 16, 1943, the Secretary of War communicated with the Governor of California, pursuant to R. S. §355, 40 U.S.C.A. Section 255, accepting "exclusive jurisdiction over all lands acquired by (the United States) for military purposes within the State of California, title to which has heretofore vested in the United States and over which exclusive jurisdiction has not heretofore been obtained." (Exhibit 4).

The State of California contends that California Political Code Section 34 operates only as a consent to the acquisition of land by the United States, but not as a transfer of jurisdiction to the United States over lands so acquired.

The California Attorney General has, himself, held that, under Art. I, Sec. 8, Cl. 17 of the United States Constitution, and under California Political Code Section 34, "jurisdiction vests in the federal government upon compliance by the latter with its own statutes. See, also, *Report of the California Attorney General, Jurisdiction over Federal Enclaves in California*, 3, 72-3 (1958). We concur in this view.

The State of California next contends that the United States did not effectively accept any tendered transfer of jurisdiction by the State, because it failed to comply with Cal. Stats. 1897, ch. 56, p. 51, codified into Government Code Section 114, which at the time of the acquisition of Travis Air Force Base provided:

"The State of California hereby cedes to the United States of America exclusive jurisdiction over all lands within this State now held, occupied or reserved by the Government of the United States for military

purposes or defense, or which may hereafter be ceded or conveyed to said United States for such purposes, provided that a sufficient description by metes and bounds and a map or plat of such lands be filed in the proper office of record in the county in which the same are situated . . ." The act further reserves the right to serve civil and criminal process.

Specifically, the State of California contends that no such map or description by metes and bounds was ever filed.

As we have already noted in our discussion of Oakland Army Air Base, Stats. 1897, ch. 56, and its related Stats. 1891, ch. 181, p. 262, are "cession" statutes, and are inapplicable to transfers of jurisdiction to the United States pursuant to the consent-to-purchase method provided in Art. I, Sec. 8, Cl. 17 of the Constitution.

In the report of the California Attorney General previously cited, it is specifically stated (p. 72-3) that the map or plat filing requirements of Stats. 1897, ch. 56 (Government Code sec. 114) are not applicable to such transfers.

C. Castle Air Force Base

The complaint alleges and the record shows without contradiction that the portion of Castle Air Force Base on which sales and deliveries of milk and milk products take place is a so-called Tract A, some eighteen acres of land, more or less, which the United States claims to have acquired for military purposes, within the meaning of Art. I, Sec. 8, Cl. 17 of the Constitution, under a deed, dated April 6, 1943, from one Sheldon M. Phillips to the United States. (Mann's Affidavit, p. 5; Attachment A to Dane's Affidavit).

At the time of the acquisition, the California consent-to-purchase statute was Political Code Section 34, referred to in our discussion of Travis Air Force Base, supra.

On April 16, 1943, ten days after the date of the deed under which the United States claims to have acquired Tract A for military purposes, the Secretary of War communicated with the Governor of California, pursuant to R. S. §355, 40 U.S.C.A. Section 255, accepting "exclusive jurisdiction over all lands acquired by (the United States) for military purposes within the State of California, title to which has heretofore vested in the United States and over which exclusive jurisdiction has not heretofore been obtained." (Exhibit 4).

The contentions of the defendants as to Castle Air Force Base are for the most part similar to those raised in connection with Travis Air Force Base, which we have already discussed.

In one respect, however, Castle Air Force Base presents a special problem. The State of California contends that the United States did not acquire title to Tract A, Castle Air Force Base, for military purposes on April 6, 1943, nor even by April 16, 1943, the date of the Secretary of War's letter to the Governor of California, accepting exclusive jurisdiction of all land "title to which has heretofore vested in the United States". Therefore, argues the State, Tract A was not included within the terms of that letter, and the United States has not in fact accepted exclusive jurisdiction over Tract A.

The record shows that Tract A was originally acquired by the National Housing Agency for the construction of war housing (Attachments B and C to Dame's Affidavit), under the provisions of the Lan-

ham Act, 54 Stat. 1125, 42 U.S.C.A. Section 1521 et seq., Section 10 of which precludes the United States from accepting exclusive jurisdiction over land so acquired.

Thereafter by letter, dated October 21, 1942, effective September 1, 1942, Tract A was transferred from the National Housing Agency to the War Department. (Attachment D to Dame's Affidavit). On April 6, 1943, pursuant to a lawful condemnation action, a deed from one Sheldon M. Phillips to the United States was delivered to the War Department. (Attachment A to Dame's Affidavit) and the certificate of title was declared satisfactory by the United States Attorney General by letter dated September 29, 1943, addressed to the Secretary of War. (Attachment E to Dame's Affidavit).

The State of California contends, however, that title to Tract A did not pass to the United States under this deed of April 6, 1943, for the reason that the grantor, Sheldon M. Phillips, did not himself receive title to Tract A until July 17, 1943, when he received a deed from the Federal Farm Mortgage Corporation. (Affidavit of Paul Andrew; Attachment A thereto). Therefore, argues the State, Phillips' prior deed of April 6, 1943 did not pass title to the United States until at least July 17, 1943, under the rule of after-acquired title, set forth in California Civil Code Section 1106.

Defendants contend that there is thus presented a material issue of fact relative to the time of the transfer of title to the United States, and that for this reason the Court cannot grant summary judgment in the case of Castle Air Force Base.

Assuming, without deciding, that the Phillips deed of April 6, 1943 did not effectively convey title in

Tract A to the United States, and that, therefore, Tract A was not within the terms of the Secretary of War's letter of acceptance of exclusive jurisdiction, we note that there is contained in the record another and subsequent letter, dated January 3rd of the following year, 1944, which accepts exclusive jurisdiction in terms similar to the prior letter of April 16, 1943. (Part of Exhibit 12).

It is clear, even upon the State's theory, that the United States had acquired title to Tract A by July 17, 1943 (Andrew Affidavit, supra). In that case, the letter of the Secretary of War, dated January 3, 1944, accepting exclusive jurisdiction over all lands title to which had previously vested in the United States, was applicable by its terms to Tract A and effectively accepted jurisdiction over it, even if the previous acceptance letter of April 16, 1943 did not. (Exhibit 12, supra).

The State of California makes the further point that Section 10 of the Lanham Act, under which Tract A was originally acquired, provides that the United States shall not accept exclusive jurisdiction over lands so acquired.

We are of the opinion, however, that after the transfer of Tract A from the National Housing Administrator to the War Department, pursuant to 42 U.S.C.A. Section 1524, for military purposes, statutory provisions of the Lanham Act, including Section 10, became inapplicable to the land. The War Department would not be subject to statutory provisions pertinent only to lands held by the National Housing Agency for Lanham Act purposes. Upon its acquisition of Tract A for its own military purposes the War Department held it subject only to statutes pertinent to its own powers and purposes.

In the possession of the War Department. Tract A came within the provisions of Article 1, Section 8, Clause 17 of the Constitution and, with the consent of the State of California provided in Political Code Section 34, the United States, through the War Department, could accept exclusive jurisdiction over it. There is, therefore, no material issue of fact involved in our conclusion that Castle Air Force Base is within the exclusive jurisdiction of the United States.

VI. THE ISSUE OF THE SUPREMACY CLAUSE

We turn now to the contention of the plaintiff that, even if these installations are not within the exclusive jurisdiction of the United States, there is a conflict between the California Milk Stabilization Act and federal procurement regulations and policy, and that, therefore, the milk act, so far as the United States is concerned, violates the Supremacy Clause of the Constitution, Art. VI, Cl. 2.

In considering whether the California Milk Act is inconsistent with federal procurement regulations and policy, we must bear in mind that the Supreme Court in the *Penn Dairies* decision, referred to at the outset of this opinion, held, *inter alia*, that the Pennsylvania Milk Control Law of April 28, 1937, P. L. 417, Purdon's Pa. Stat. Ann., Title 31 Section 700j—101, et seq., which is similar to the California Act, was not in conflict with any federal procurement statute, regulation or policy.

The Court there took the view that federal legislation did not disclose a purpose to "immunize government contractors from local price-fixing regulations which would otherwise be applicable." (318 U.S. at p.

278) even though such regulations imposed increased economic burdens on the federal government.

The Court particularly noted, however, that the Pennsylvania Milk Control Act was not directed at the federal government or its officers, citing the Pennsylvania State court below, 148 Pa. Super. 261, 270-271, 24 A 2d 717 (1942).

In a more recent expression of the Supreme Court upon the subject of conflict between State regulation and federal procurement policy, *Public Utilities Commission of California* v. *United States*, 355 U.S. 534 (1958), which notes, but distinguishes the above *Penn Dairies* case, it has been held that California Public Utilities Code Section 530 is in clear conflict with federal procurement regulations sanctioning the policy of negotiated rates by federal procurement officers in shipments of federal property.

Section 530 provided in part that the California Public Utilities Commission "may permit common carriers to transport property at reduced rates for the United States, state, county or municipal governments, to such extent and subject to such conditions as it may consider just and reasonable . . ."

In considering the question "whether the United States can be subjected to the discretionary authority of a state agency for the terms on which, by grace, it can make arrangements for services to be rendered it," (355 U.S. at p. 379) the Court discussed federal procurement policy, stating at p. 540 of 355 U.S.: "Congress has provided a comprehensive policy governing procurement." Then, at p. 542 at 355 U.S.: "It seems clear that these regulations—which have the force of law, *Leslie Miller, Inc.* v. *Arkansas*, 352 U.S. 187; *Standard Oil Co. v. Johnson*, 316 U.S. 481—sanction the policy of negotiating rates for ship-

ment of federal property and entrust the procurement officers with the discretion to determine when existing rates will be accepted and when negotiation for lower rates will be undertaken."

Federal procurement policy, dealing with federal contracts and purchases, whether in relation to the procurement of transportation or milk or other property or services, is set forth in the provisions of the Armed Services Procurement Act of 1947, 62 Stat. 22, 10 U.S.C. Section 2301, et seq. described in the House of Representatives report as "a comprehensive revision and restatement of the laws governing the procurement of supplies and services." (House Rept. 109, 80th. Cong., 1st. Sess., p. 6).

That competitive bidding is the cornerstone of this policy is exemplified by 10 U.S.C. Section 2304(a), which provides that purchases of property or services, or contracts therefor, shall be made by competitive bidding through formal advertising.

That section allows heads of agencies in certain special situations to negotiate purchases or contracts, rather than observe the basic competitive bidding policy, as, for example, purchases of perishable or non-perishable subsistence supplies, such as milk. Section 2304(a)(9).

Notwithstanding this last mentioned statutory exception, fluid milk is purchased at Travis and Castle Air Force Bases by the Air Force through competitive, advertised contracts, pursuant to Air Force Procurement Instructions 2-102(c)(1).

Another exception, which should be noted, is Section 2304(a)(10), which authorizes negotiation where the purchase or contract is for property or services for which it is "impracticable to obtain competition." Defendants have sought to rely upon this exception.

contending that it is "impracticable to obtain competition" where the State has established minimum milk prices. However, 32 C.F.R. Section 3.210-3 provides that this exception is inapplicable where negotiation is authorized for the purchase of perishable or non-perishable subsistence supplies, such as milk.

In any event, the procurement regulations are clear as to the paramount objective of defense procurement policy: "*Such procurement shall be made on a competitive basis whether by formal advertising or by negotiation, to the maximum practicable extent.*" 32 C.F.R. Section 1.301. (emphasis supplied).

We note further that milk and milk products are included within a general procurement scheme so comprehensive that it is designed, not only for economy and efficiency, but also for health and quality control. For example, 32 C.F.R. Section 608.1, specifically requires the award of contracts for procurement of milk or milk products to be limited to dairies which have passed defense inspections or which have been certified by federal authorities as approved sources of supply. See, also 32 C.F.R. Sections 156.1, 156.2, regarding inspection generally, and 32 C.F.R. Section 608.3, regarding the inspection of milk plants and dairy farms.

It is evident, therefore, as stated in the *Public Utilities* case, that Congress has provided a comprehensive policy governing procurement. This is just as true in the case of milk purchases as it is in the case of transportation-rate contracts.

In the *Public Utilities* case the Court noted that California Public Utilities Code Section 2112 provided penalties applicable, not only to the carrier, but to shippers as well, and that the prohibition of the statute was so broad as to deny the United States the right

to ship at reduced rates without State Commission approval.

The Supreme Court in the *Public Utilities* case, did not point to any provision of the Public Utilities Code, or any other California law or decision, which would expressly or impliedly indicate a legislative intent to aim the penal provisions of the Public Utilities Code directly at the federal government and its officers, if they should be shippers in violation of the code. The Court nevertheless, took the view that the Code was so directed, sighting the District Court opinion (355 U.S. at p. 538) ". . . 'If a United States officer were to negotiate with a carrier for 'reduced rates' without permitting the defendant to determine whether it 'considered' the conditions of the contract 'just and reasonable,' he could be thrown into the county jail.' 141 F. Supp. at [168] at p. 186."

The Court distinguished the *Penn Dairies* decision for the stated reason that there, the Court (318 U.S. at p. 270) had concluded that the State regulation "imposes no prohibition on the national government or its officers." In the *Public Utilities* case, the Court continued, ". . . the State places a prohibition on the Federal Government." 355 U.S., at p. 544.

The United States contends that, even if the *Penn Dairies* decision has not been overruled in effect by the *Public Utilities* case, supra, the *Penn Dairies* decision is inapplicable here for the same reason on which it was distinguished in the *Public Utilities* case, i.e., that the California Milk Stabilization Act, unlike the Pennsylvania Milk Control Act, does impose a prohibition on the federal government and its officers.

In our consideration of the merit of this contention we note certain provisions of the California Milk Act which are quite analogous to the provisions of the Public Utilities Code considered in the *Public Utilities* case.

Under Section 4361 of the California Milk Law, the duty to observe established minimum milk prices and penalties for failure to do so, are imposed, not only upon milk producers and distributors with respect to their sales of milk, but also upon all retail stores, restaurants, confectioneries, or *other places for consumption on or off the premises*, (emphasis supplied) which "purchase" milk from distributors, or which sell to any consumer.

Section 4361 contains further broad provisions designed to make such "purchases" of milk unlawful regardless of the method or device utilized, and regardless of whether they are effected directly or through agents, employees, or subsidiaries.

Section 4280(f) makes it unlawful to handle milk within the marketing areas of the State which is to be sold at less than established minimum prices "at any place, whether part of the marketing area or not."

Section 4410 makes the violation of any provision of the act, or of any stabilization and marketing plan, or of any order of the director, or of any of the unfair practices thereof, a misdemeanor.

The language of these sections is broad enough to include the federal government and its procurement officers, as purchasers of milk from distributors at the various federal military reservations for consumption either on base in the military mess halls.

or off base through retail sales made in military commissaries.

We are unable to discover any substantial difference between the situation considered in the *Public Utilities* case and the situation here presented.

The federal procurement statutes, regulations and policy there were substantially similar to those here involved.

The Public Utilities Code there considered, applied not only to carriers, but to shippers, including shipments by the United States. So, also here, the milk act applies not only to milk producers and distributors, but also to purchasers of milk, including purchases of milk by the United States. Indeed, the basic contention of the State of California in its brief, and the ruling of its Supreme Court in *Pacific Coast Dairy, Inc.* v. *Department of Agriculture*, 19 Cal. 2d 818, 123 P. 2d 442 (1942), has been and is, that its milk act applies to sales of milk in which the United States is the purchaser.

In the *Public Utilities* case the United States was "subjected to the discretionary authority of a state agency for the terms on which, by grace, it can make arrangements for services to be rendered it." 355 U.S. at page 539. So, also, here the United States is subjected to the discretionary authority of the Director of the California Department of Agriculture (who establishes minimum milk prices for marketing areas) for the terms on which by grace, it can make arrangements for purchases of milk at its various military installations.

In the briefs in the pending cases, the State of California disclaims any intent to enforce the penal provisions of its milk act against the United States

Title 18 U.S.C. Section 7, referred to in the foregoing section, provides, subsection (3), that the term "special maritime or territorial jurisdiction of the United States" includes:

> "Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building."

It has been held that Title 18, U.S.C. Section 13 is not an unconstitutional delegation of power to the State legislatures, even though it in effect makes applicable to a federal enclave subsequently enacted criminal laws of the State within which the enclave is located. *United States* v. *Sharpnack*, 355 U.S. 286 (1958).

The statute constitutes an adoption by Congress for federal enclaves of State criminal law, when federal criminal law has not defined a certain offense or provided for its punishment. *People of Puerto Rico* v. *Shell Co.*, 302 U.S. 253 (1937). The State law, assimilated under this section, becomes in effect federal law, *Johnson* v. *Yellow Cab Co.*, 321 U.S. 383 (1944).

In *Pacific Coast Dairy, Inc.* v. *Department of Agriculture*, 1943, 318 U.S. 285, at page 294, the possibility of the assimilation of local law was noted by the Supreme Court, with this statement: "When the federal government acquired the tract (Moffet Field), local law not inconsistent with federal policy remained in force until altered by national legislation," citing *Stewart & Co.* v. *Sadrakula*, 309 U.S. 94 (1940).

or its procurement officers. A similar disclaimer proved of no avail in the *Public Utilities* case. (See reference to record (355 U.S. at p. 551).

We conclude, therefore, that even if the *Penn Dairies* case has not been in effect overruled by the *Public Utilities* case, it is inapplicable here because the California Milk Stabilization Act "places a prohibition on the Federal Government" within the meaning of the *Public Utilities* case, and, therefore, so conflicts with federal procurement statutes and policy as to be invalid under the Supremacy Clause, Art. VI, Sec. 2.

VII. THE ISSUE OF ASSIMILATION

Defendants contend that, even if the State be deemed to have transferred exclusive jurisdiction over the three bases here involved to the federal government, the existing criminal laws of California remained operative therein or became operative thereto by virtue of the provisions of Title 18 U.S.C. Section 13, the so-called Assimilative Crimes Act, as amended in 1948, which provides:

> "Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in Section 7 of this title, is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment."

The Court further noted, however, that Moffet Field, there involved, had been acquired by the United States in 1931, long before the enactment of the milk stabilization law in 1935, and concluded that no assimilation had occurred in the case of Moffet Field.

Defendants point out that Travis and Castle Air Force Bases, acquired by the United States in 1943, and Oakland Army Terminal, acquired in 1950, were all acquired subsequent to the enactment of the California Milk Stabilization Act of 1935. They argue that by operation of the Assimilative Crimes Act, enacted in its present form in 1948, the penal provisions of the milk act, notably Sections 4361 and 4410, were adopted as federal law on these enclaves.

The Courts have held, however, that the Assimilative Crimes Act does not operate to adopt any State penal statutes which are in conflict with federal policy, as expressed by acts of Congress or by valid administrative regulations having the force of law. *Air Terminal Services Inc.* v. *Rentzel* D.C.E.D. Va. 1949, 81 F. Supp. 611; *Nash* v. *Air Terminal Services Inc.*, D.C.E.D. Va. 1949, 85 F. Supp. 545; *Johnson* v. *Yellow Cab Co.*, supra.

If, therefore, we are correct in our ruling that the California milk act is in conflict with federal procurement regulations and policy within the meaning of the *Public Utilities* case, the penal provisions of the act were not assimilated into the installations here involved.

Even if we assume that there is no conflict between the California milk act and federal procurement policy and further, that its penal provisions could have been assimilated in these installations notwithstanding ex-

clusive federal jurisdiction over them, any such assimilated provisions would have become federal, not state law, and as such, their enforcement would be the prerogative of the United States Attorney General and the various United States Attorneys.

The State of California, conceding that such would be the case, takes the position that, although violations of assimilated provisions of the milk laws within federal enclaves would be subject to prosecution only by federal authorities in the federal courts, violations of the milk act would also be subject to prosecution by State authorities in State Courts when such violations involved conduct of distributors occurring on state territory and constituting a violation of state law. *Commonwealth* v. *Rohrer,* 1937 37 Pa. Dist. & Co. 410.

In this respect, we note that Section 4280(f) of the milk act, already referred to, makes it unlawful to handle milk within the marketing areas of the State which is to be sold at less than established minimum prices at any place, whether part of the marketing area or not.

We understand the position of the defendants to be that, assuming assimilation of the penal provisions of the milk act in exclusive jurisdiction enclaves, such circumstance would be an equitable factor for this Court to consider before granting injunctive relief to the federal government, which in effect would preclude the State from enforcing its milk law against distributors selling to the federal government even though their conduct may occur on State territory and constitute unlawful conduct under State law.

Such a contention would, in any event, be pertinent to the pending cases only indirectly and collaterally. Absent a prosecution by the federal government under the provisions of the Assimilative Crimes Act, this

Court would abstain from a ruling upon the question whether the milk act, if not in conflict with federal regulation and policy, would have been assimilated within these enclaves.

In *Johnson* v. *Yellow Cab Co.*, 321 U.S. 383, Oklahoma State enforcement officials, enjoined on petition of a common carrier from attempting to enforce State liquor laws with respect to purchases of liquor at Fort Sill military reservation, contended that the State liquor law had been assimilated at the base. The Supreme Court refrained from ruling on this point, saying: (321 U.S. at pp. 292-293)—

> "If the carrier's delivery of these liquors on the Fort Sill Reservation would violate any federal law, federal agencies exist which are charged with responsibilities to institute appropriate proceedings against the carrier in federal tribunals. In such proceedings the parties would be the United States and the carrier, and the issue of violation of federal laws would be directly, and not collaterally, presented. The complicated federal questions involved, concerning various federal statutes as well as Army rules and regulations, could be answered upon an adequate presentation of all facts essential to a right and just determination."

CONCLUSION

For the reasons herein stated, the Court concludes, subject to the preparation by the plaintiff in these cases, as prevailing party, of findings of fact and conclusions of law, decree and writ, and settlement and signing thereof by the Court, pursuant to Rule 21 of this Court:

That, in Civil Action No. 39030, defendants' motion to stay proceedings, to quash the temporary restraining order and to deny the petition for preliminary injunction, be denied; that a decree be entered declaring the aforesaid sections of the California Agricultural Code, insofar as they prohibit or authorize the prohibiting of distributors and producers of milk within the State of California from selling and delivering milk to the United States at the Oakland Army Terminal at rates lower than those established by defendants, as unconstitutional and void; and, that the defendants, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them, be permanently enjoined from making any effort to prohibit such producers and distributors or the United States and its purchasing agents from negotiating and making arrangements and contracts for the sale and delivery of fluid milk to the United States at the Oakland Army Terminal at rates lower than those established by defendants;

Further, that in Civil Action No. 39073, defendants' motion to stay proceedings, to quash the temporary restraining order and to deny the petition for preliminary injunction, be denied, and that plaintiff's motion for summary judgment be granted, and that a decree be entered declaring the aforesaid sections of the California Agricultural Code, insofar as they prohibit or authorize the prohibiting of distributors and producers of milk within the State of California from selling and delivering milk to the United States at Travis Air Force Base and Castle Air Force Base at rates lower than those established by defendants, as unconstitutional and void; and, that the defendants, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation

with them, be permanently enjoined from making any effort to prohibit such producers, distributors, or the United States and its purchasing agents from negotiating and making arrangements and contracts for the sale and delivery of fluid milk to the United States at Travis Air Force and Castle Air Force Bases at rates lower than those established by defendants.

Dated: November 29th, 1960.

GILBERT H. JERTBERG
United States Circuit Judge

GEORGE B. HARRIS
United States District Judge

WILLIAM T. SWEIGERT
United States District Judge

[Title of Court Omitted]

UNITED STATES OF AMERICA, *Plaintiff,* vs. WILLIAM E. WARNE, Director of Agriculture of the State of California, and STANLEY MOSK, Attorney General, State of California, *Defendants.*	No. 39030 and 39073 Order

This Court, in its Memorandum Opinion herein, directed plaintiff, as prevailing party, to prepare findings of fact and conclusions of law, and appropriate decree and writ, subject to the settlement and signing thereof, pursuant to Rule 21 of this Court.

Now, upon the written request of both parties herein, the Court withdraws its direction to prepare findings of fact and conclusions of law, and adopts its Memorandum Opinion herein as sufficient, under Rule 52, Federal Rules of Civil Procedure, to constitute the Court's findings of fact and conclusions of law herein.

Therefore, the language of that Memorandum Opinion, page 33, lines 8-11 thereof, directing the plaintiff as prevailing party, to prepare findings of fact and conclusions of law, is hereby stricken, and

the plaintiff will prepare an appropriate order and decree herein.

Dated: March 27, 1961.

GILBERT N. JERTBERG
United States Circuit Judge

GEORGE B. HARRIS
United States District Judge

WILLIAM T. SWEIGERT
United States District Judge

[Title of Court Omitted]

UNITED STATES OF AMERICA, *Plaintiff*, v. CHARLES PAUL, Director of Agriculture, State of California, and STANLEY MOSK, Attorney General, State of California, *Defendants*.	Civil No. 39030

ORDER AND INJUNCTION

This cause having come on for hearing on an application by the United States of America for an injunction restraining defendants from enforcing the minimum price provisions of Chapter 17, Div. 6, California Agricultural Code and of regulations issued thereunder, with respect to sales and deliveries of milk and milk products to the United States at Oakland Army Terminal, upon the ground that such enforcement is unconstitutional; and upon defendants' motion to stay proceedings, to quash the temporary restraining order and deny the petition for injunction, and the Court having heretofore, on November 29, 1960 filed its Memorandum Opinion, and by Order filed March 27, 1961 adopted said Memorandum Opinion as sufficient under Rule 52, Federal Rules of Civil Procedure, to constitute the Court's findings of fact and conclusions of law,

NOW, THEREFORE, it is this 17th day of April, 1961, ORDERED:

1. Defendants' motion to stay proceedings is denied;

2. Defendants' motion to quash the temporary restraining order and to deny the petition for injunction is denied;

3. Defendants and each of them and their agents, servants, employees, and attorneys, successors and assigns, and all persons in active concert or participation with them be and they hereby are permanently enjoined and restrained from enforcing or attempting to enforce against producers or distributors of milk or milk products or against the United States or its purchasing agents, with respect to sales, purchases, or deliveries of milk or milk products at the Oakland Army Terminal, either the state minimum producer price, wholesale price, or retail price regulations promulgated by the Director of Agriculture pursuant to the California Milk Stabilization Act.

(S) GILBERT H. JERTBERG
United States Circuit Judge

GEORGE B. HARRIS
United States District Judge

W. T. SWEIGERT
United States District Judge

[Title of Court Omitted]

UNITED STATES OF AMERICA, *Plaintiff,* v. CHARLES PAUL, Director of Agriculture, State of California, and STANLEY MOSK, Attorney General, State of California, *Defendants.*	Civil No. 39073

ORDER AND INJUNCTION

This cause having come on for hearing on an application by the United States of America for an injunction restraining defendants from enforcing the minimum price provisions of Chapter 17, Div. 6, California Agricultural Code and of regulations issued thereunder, with respect to sales and deliveries of milk and milk products to the United States at Travis Air Force Base and Castle Air Force Base, upon the ground that such enforcement is unconstitutional, and upon defendants' motion to stay proceedings, and the Court having heretofore on November 29, 1960 filed its its Memorandum Opinion, and by Order filed March 27, 1961 adopted said Memorandum Opinion as sufficient under Rule 52, Federal Rules of Civil Procedure, to constitute the Court's findings of fact and conclusions of law,

NOW, THEREFORE, it is this 17th day of April, 1961,

ORDERED:

1. Defendants' motion to stay proceedings is denied;

2. Defendants' and each of them and their agents, servants, employees, and attorneys, successors and as-

signs, and all persons in active concert of participation with them be and they hereby are permanently enjoined and restrained from enforcing or attempting to enforce against producers or distributors of milk or milk products or against the United States or its purchasing agents, with respect to sales, purchases, or deliveries of milk or milk products at Travis or Castle Air Force Bases, either the state minimum producer price, wholesale price, or retail price regulations promulgated by the Director of Agriculture pursuant to the California Milk Stabilization Act.

(S) GILBERT H. JERTBERG
United States Circuit Judge

GEORGE B. HARRIS
United States District Judge

W. T. SWEIGERT
United States District Judge

[Title of Court Omitted]

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* v. CHARLES PAUL, Director of Agriculture of the State of California, and STANLEY MOSK, Attorney General, State of California, *Defendants-Appellants.*	Civil No. 39030 and 39073

ORDER EXTENDING TIME FOR DOCKETING AND FILING RECORD IN THE UNITED STATES SUPREME COURT

Based on the affidavit of JOHN FOURT filed herewith and on application of counsel for defendants-appellants, and good cause appearing:

IT IS HEREBY ORDERED pursuant to Rule 13 of the Revised Rules of the Supreme Court of the United States, that the time within which the appellants named above may docket the case and file the record thereof with the Clerk of the Supreme Court of the United States be, and it is hereby enlarged, to and including July 24, 1961.

Dated:

GEORGE B. HARRIS
United States District Judge

APPENDIX B

The pertinent provisions of the California milk stabilization act, Chapter 17, Division 6, California Agricultural Code, as amended, California Statutes of 1959, are as follows:

4200. The production and distribution of fluid milk and of fluid cream and the dissemination of accurate, scientific information as to the importance of milk and other dairy products in the maintenance of a high level of public health, is hereby declared to be a business affected with a public interest. The provisions of this chapter are enacted in the exercise of police powers of this State for the purpose of protecting the health and welfare of the people of this State.

4201. It is hereby declared that fluid milk and fluid cream are necessary articles of food for human consumption; that the production and maintenance of an adequate supply of healthful milk of proper chemical and physical content, free from contamination, is vital to the public health and welfare, and that the production, transportation, processing, storage, distribution or sale of fluid milk and fluid cream in the State of California is an industry affecting the public health and welfare; that unfair, unjust, destructive and demoralizing trade practices have been carried on and are now being carried on in the production, marketing, sale, processing or distribution of fluid milk and fluid cream, which constitute a constant menace to the health and welfare of the inhabitants of this State and tend to undermine sanitary regulations and standards of content and purity, however effectually such sanitary regulations may be enforced; that health regulations alone are insufficient to prevent disturbances in the milk industry which threaten to destroy and seriously impair the future supply of fluid milk; and to safeguard the consuming public from future inadequacy of a supply of this necessary commodity; that it is the policy of this State to promote, foster and encourage the intelligent production and orderly market-

ing of comodities necessary to its citizens, including milk, and to eliminate speculation, waste, improper marketing, unfair and destructive trade practices, and improper accounting for milk purchased from producers.

4202. It is recognized by the Legislature that conditions within the milk industry of this State are such that it is necessary to establish marketing areas wherein different prices and regulations are necessary, and for that purpose the Director of Agriculture of this State shall have the administrative authority, with such additional duties as are herein prescribed, after investigation and public hearing, to prescribe such marketing areas and modify the same when advisable or necessary.

4203. The foregoing statements in this article of facts, policy and application of this chapter are hereby declared a matter of legislative determination.

4204. The purposes of this chapter are:

(a) To provide funds for administration and enforcement of this chapter, by assessments to be paid by producers of fluid milk or fluid cream, or both, and from licenses issued to distributors in the manner prescribed herein.

(b) To authorize and enable the director to prescribe marketing areas and to determine prices to producers for fluid milk or fluid cream or both, which are necessary due to varying factors of costs of production, health regulations, transportation and other factors in said marketing areas of this State; provided that the cost to distributors within any marketing area, for fluid milk or fluid cream shall be uniform with all other distributors purchasing fluid milk and fluid cream of similar grade or quality under like terms and conditions.

(c) To authorize and enable the director to formulate stabilization and marketing plans subject to the limitations herein prescribed with respect to the contents of such stabilization and marketing plans and, declare such plans in effect for any marketing area.

(d) To enable the dairy industry with the aid of the State to correct existing evils, develop and maintain satisfactory marketing conditions, and bring about and maintain a reasonable amount of stability and prosperity in the production and marketing of fluid milk and fluid cream and provide means for carrying on essential educational activities.

4205. It is the intent of the Legislature that the powers conferred in this chapter shall be liberally construed. Nothing in this chapter shall be construed as permitting or authorizing the development of conditions of monopoly in the production or distribution of fluid milk or fluid cream. In the establishment of the terms and conditions under which fluid milk and fluid cream shall be purchased from producers, and under which distributors and retail stores shall sell and distribute the same, such terms and conditions shall be those which will, in the several localities and markets of the State and under the varying conditions of production and distribution insure an adequate and continuous supply of pure fresh wholesome fluid milk and fluid cream to consumers thereof at fair and reasonable prices.

Article 2. Definitions

4210. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

4211. "Board" means any local control board created as authorized in this chapter.

4212. "Fluid milk" means any and all whole or concentrated milk that is produced in conformity with applicable health regulations for market milk of the place where such milk is consumed.

4213. "Fluid cream" means cream as defined in this code, and any combination of cream and milk, or any fluid product of milk or cream sold under any trade name whatsoever, which is not packaged in hermetically sealed containers and which contains more than 11.6 percent milk fat and conforms to the health and sanitary regulations of the place where sold or disposed of for human consumption.

4214. "Dairy products" includes any product manufactured from milk or any derivative or product of milk.

4215. "Producer" means any person who produces fluid milk from five or more cows or goats in conformity with the applicable health regulations of the place in which it is sold, and whose fluid milk or fluid cream is received or handled by any distributor. "Producer" includes any association of producers.

4216. "Distributor" means any person, whether or not such person is a producer or an association of producers, who purchases or handles fluid milk or fluid cream for sale, including brokers, agents, copartnerships, cooperative corporations and incorporated and unincorporated associations. The definition of "distributor" shall not include any of the following: (1) Any retail store that is not engaged in processing and packaging fluid milk or fluid cream. (2) any establishment where fluid milk or fluid cream is sold only for consumption on the premises, that is not engaged in processing and packaging fluid milk or fluid cream. (3) any person owned or controlled by one or more

retail stores, or owned or controlled by one or more establishments where fluid milk or fluid cream is sold for consumption on the premises which person is not actively and directly engaged in the processing and packaging of fluid milk or fluid cream, (4) any producer who delivers fluid milk or fluid cream only to a distributor.

4217. "Producer-distributor" means any person who is both a producer and a distributor of fluid milk or fluid cream. For the purposes of this chapter a producer-distributor shall be deemed to be a producer in any transaction involving the delivery of fluid milk or fluid cream produced by him to a distributor, and shall be deemed to be a distributor in any transaction involving the delivery of fluid milk or fluid cream to a person who is not a distributor as defined in this article.

4218. "Retail store" means any person or persons owning or operating a retail grocery store, restaurant, confectionery, or other similar business, where fluid milk or fluid cream is sold to the general public for consumption off the premises.

4219. "Marketing area" is any area within this State declared to be such in the manner prescribed in this chapter.

4220. "Stabilization and marketing plan" means any plan formulated and made effective by the director within the legislative standards provided by this chapter and shall include, among other things, the establishing of prices to be paid by distributors for any or all of the various classes of fluid milk or fluid cream.

4221. "Consumer" means any person who purchases fluid milk, fluid cream or dairy products for consumption.

4222. "Person" means any individual, firm, corporation, association or any other business unit.

4223. "Fluid skim milk" means skim milk as defined in this code that is derived from market milk and conforms to the health and sanitary regulations of the place where sold or disposed of for human consumption.

4225. Fluid milk may be classified for the purposes of this chapter as provided in this article.

4226. Class 1 comprises any fluid milk, fluid skim milk, or fluid cream that is supplied to consumers as market milk, market skim milk, or market cream or concentrated milk or any combination of market milk, market skim milk, and market cream, or any market milk which is not sterilized and packaged in hermetically sealed containers, or any other dairy product in which the use of market milk or any components or derivatives of market milk is required by or pursuant to the provisions of this code, or any fluid milk, fluid skim milk, or fluid cream which is used in standardizing market milk.

4227. Class 2 comprises any fluid milk, fluid skim milk or fluid cream which is used in the manufacture of any product for which a definition and standard is prescribed in Division 4 of this code, except any such product which is included in Classes 1 and 3.

4228. Class 3 comprises all fluid milk, fluid skim milk, or fluid cream, which is used in the manufacture of butter, cheese other than cottage cheese, dried milk, dried skim milk, nonfat dry milk solids, defatted milk solids, dried buttermilk, or any product for which no definition and standards are prescribed in Division 4 of this code; provided, that whenever the director establishes a temporary definition and standards for an

new milk product pursuant to Section 441 he shall assign such new product to that class under this article which includes the most nearly comparable product or products as determined by the director; and provided further, that any product required by any regulation of the director pursuant to Section 441 to be made from market milk or any components or derivatives of market milk shall be included within Class 1.

4230. In designating and prescribing or providing methods for designating and prescribing minimum prices to be paid by distributors to producers for Classes 2 or 3 fluid milk, fluid skim milk or fluid cream, the director may take into consideration all relevant economic factors, including but not limited to the relative market values of the various products involved and the market price of other milk which may be used for the same purposes set forth in such respective classes. In no event shall any distributor pay producers or any association of producers less than the applicable price established for the usage to which the fluid milk, fluid skim milk or fluid cream purchased from them is applied; and no payment shall be made by distributors to producers or any association of producers of prices lower than those established in the applicable stabilization and marketing plan for Class 3 usage.

Article 4. General Powers of the Director

4240. The director shall enforce the provisions of this chapter and any stabilization and marketing plan initiated pursuant to the provisions of this chapter, and for that purpose may make such rules and regulations as he deems necessary.

4241. The director shall have and may exercise any or all the powers conferred by the Government

Code upon the head of a department of the State with respect to hearings and investigations under this chapter.

4242. The director is hereby declared to be the instrumentality of this State for the purpose of administering and enforcing the provisions of this chapter and to execute the legislative intent herein expressed, and is hereby vested with the administrative authority described in this chapter.

4243. The director may investigate any and all transactions between producers and distributors or among distributors or between distributors and retail stores or between distributors and consumers or between retail stores and consumers, and for that purpose the director or his authorized agents shall have access to and may enter at all reasonable hours all places where milk is being stored, bottled or manufactured, or where milk or milk products are being bought, sold or handled, or where the books, papers, records or documents relating to such transactions are kept, and shall have power to inspect and copy the same in any place within the State.

4244. The director may issue licenses to distributors and require the registration of producers.

4245. The director may formulate any stabilization and marketing plan as prescribed in this chapter and declare the same effective after public hearing and reasonable notice by mail or otherwise to all producers and distributors of record with the director, affected by such plan.

4246. The director may prescribe minimum prices to be paid by distributors in accordance with a stabilization and marketing plan for fluid milk and classify said milk according to usage by distributors, pursuant to the provisions of this chapter.

4247. In the event that the director establishes under this chapter a stabilization and marketing plan for fluid milk, the director shall prescribe minimum prices to be paid by distributors for fluid cream, fluid skim milk, or milk fat, or fluid skim milk components of such fluid milk, under such a stabilization and marketing plan, pursuant to the provisions of this chapter.

4248. The director may amend or terminate any stabilization and marketing plan, after notice and public hearing as prescribed in Article 5, in the event that he finds that such plan is no longer in conformity with the standards prescribed in, or will not tend to effectuate the purposes of, this chapter. Such hearing may be held upon the motion of the director and shall be held upon receipt of a petition signed by producers, or by the board of directors of any nonprofit agricultural cooperative marketing association which is authorized by its members to so petition. Such petition or petitions shall represent not less than 55 percent of the total number of all producers and not less than 55 percent of the total production of all producers who are eligible to petition the director for the formulation of such plan.

4249. Whenever the director holds a public hearing for the purpose of considering whether or not the minimum prices for fluid milk to be paid to producers by distributors should be modified in order to comply with the provisions of this chapter, the director may also hold a public hearing for the sole purpose of considering the effect of any such proposed change in the prices to be paid to producers by distributors upon the minimum wholesale and minimum retail prices then in effect. Following said

hearing the director may modify said minimum wholesale and minimum retail prices to the extent necessary to reflect any such modifications in prices to be paid to producers by distributors without the necessity of considering or making findings at that time upon the factors, other than the cost of fluid milk to distributors, specified in Sections 4255 and 4260. The hearings authorized in this section may be consolidated pursuant to the applicable provisions of Section 4259.

4254. A full and accurate record of business or acts performed or of testimony taken by the director in pursuance of the provisions of this chapter shall be kept and placed on file in the office of the director.

4255. Any order of the director hereunder substantially affecting the rights of any interested party may be reviewed by any court of competent jurisdiction. Any such action must be commenced within 30 days after the effective date of the order complained of or within 30 days after the injurious effect complained of becomes reasonably apparent.

4256. The director may bring an action to enjoin the violation or the threatened violation of any provision of this chapter or of any order made pursuant to this chapter in the superior court in the county in which such violation occurs or is about to occur. There may be enjoined in one proceeding any number of defendants alleged to be violating the same provisions or orders, although their properties, interests, residence, or place of business, may be in several counties and the violations separate and distinct. Any proceeding brought hereunder shall be governed in all other respects by the provisions of Chapter 3 of Title 7 of Part 2 of the Code of Civil Procedure.

4257. The director may confer, enter into agreements, or otherwise arrange with the constituted au-

thorities of this State, other states, or agencies of the United States with respect to plans relating to the stabilization and distribution of fluid milk and fluid cream within this State or as between this State and other states or the United States, and may exercise his powers hereunder to effectuate and enforce such plans.

4260. Whenever the director conducts a survey of the costs of production of fluid milk or fluid cream, or both, in any marketing area, which does not include the costs of production of all of the producers for the area, the director shall, upon request, supply the names and addresses of the producers whose costs were included in such survey to any interested party as a matter of public record.

Article 5. Formation and Adoption of Stabilization and Marketing Plans

4270. The director shall designate marketing areas which he deems necessary or advisable to effectuate the purposes of this chapter, and wherein he finds the conditions affecting the production, distribution and sale of fluid milk, fluid cream and fluid skim milk are reasonably uniform. The director shall have the power to establish additional areas or to modify areas theretofore established when he deems the establishment or modification of such areas necessary or advisable to effectuate the purposes of this chapter. When the director finds, after a public hearing in and for each particular marketing area under consideration for consolidation, that conditions of production and distribution are reasonably uniform in two or more such marketing areas wherein stabilization and marketing plans and minimum wholesale and minimum retail prices are in effect, he may con-

solidate the areas; provided, that at said hearings more than thirty-five (35) percent of the producers present who supply the areas proposed to be consolidated do not object to such consolidation.

4271. The director shall, prior to the formulation of a stabilization and marketing plan for fluid milk for any marketing area, conduct a public hearing in said area for the purpose of determining whether or not producers whose major interest in the fluid milk business is in the production of fluid milk for the marketing area and who represent not less than 65 percent of the total number of producers whose major interest in the fluid milk business is in the production of fluid milk for the marketing area, and who produce not less than 65 percent of the total volume of the fluid milk produced for said marketing area by all such producers, desire that a stabilization and marketing plan for fluid milk be formulated for said area; but if a petition is presented to the director by the producers whose major interest in the fluid milk business is in the production of fluid milk for the marketing area, and who represent not less than 65 percent of the total number of producers whose major interest in the fluid milk business is in the production of fluid milk for the marketing area, and who produce not less than 65 percent of the total volume of the fluid milk produced for said marketing area by all such producers, it shall not be necessary that such hearing be held.

Article 6. Mandatory Provisions

4280. Each stabilization and marketing plan shall contain provisions for prohibiting distributors and retail stores from engaging in the unfair practices hereinafter set forth:

(a) The payment, allowance or acceptance of secret rebates, secret refunds, or unearned discounts by any person, whether in the form of money or otherwise.

(b) The giving of any milk, cream, dairy products, services or articles of any kind, except to bona fide charities, for the purpose of securing or retaining the fluid milk or fluid cream or fluid skim milk business of any customer.

(c) The extension to certain customers of special prices or services not made available to all customers who purchase fluid milk or fluid cream or fluid skim milk of like quantity under like terms and conditions.

(d) The false or misleading advertising of fluid milk or fluid cream or fluid skim milk as defined in Sections 17500, 17501, and 17502 of the Business and Professions Code.

(e) The purchase of any fluid milk in excess of 200 gallons monthly from any producer or association of producers unless a written contract has been entered into with such producer or association of producers. Such contract shall include the following: (1) the amount of fluid milk to be purchased for any period; (2) the quantity of such milk to be paid for as Class 1. Such quantity shall be stated in pounds of milk or pounds of milk fat or gallons of milk; provided, that if the price to be paid for such Class 1 milk is established separately for the milk fat and skim milk contained in such milk, such quantity to be paid for as Class 1 shall be stated in pounds of milk or pounds of milk fat or gallons of milk or both in pounds of milk fat and pounds of skim milk separately, but in any marketing area where an equalization pool is a part of a stabilization and marketing plan, such contract need not specify the quantity of milk in any one class; (3) the price to be paid for all milk received;

(4) the date and method of payment for such fluid milk, which shall be that payment shall be made for approximately one-half of the milk delivered in any calendar month not later than the first day of the next following month and the remainder not later than the fifteenth day of said month; (5) the charges for transportation if hauled by the distributor; and (6) a proviso to the effect that the producer shall not be obligated to deliver in any calendar month fluid milk to be paid for at or less than the minimum price for fluid milk that is used for Class 3, as said class is defined in Section 4228. The contract may contain such other provisions as are not in conflict with this chapter. A signed copy of such contract shall be filed by the distributor with the director within five days from the date of its execution. The provisions of this subdivision relating to dates of payment shall not apply to contracts for the purchase of fluid milk from nonprofit cooperative associations of producers. The provisions of this subdivision do not apply to the purchase of fluid milk which is necessary to meet an unanticipated increase in demand or an unanticipated shortage in the supply of a distributor; provided, that the quantity of fluid milk so purchased from any one producer or association of producers shall not exceed 1,000 gallons in any one month; and, provided further, that a complete record of all such purchases shall be kept by the distributor and the price paid for such milk by the distributor shall not be less than the price established in the applicable stabilization and marketing plan for the usage to which such milk is applied.

(f) The purchasing, processing, bottling, transporting, delivering or otherwise handling in any marketing area of any fluid milk or fluid cream or fluid skim milk which is to be or is sold or otherwise disposed of

by such distributor at any place in the geographical area within the outer, outside and external boundaries or limits of such marketing area, whether such place is a part of the marketing area or not, at less than the minimum wholesale and minimum retail prices effective in such marketing area.

(g) The payment by a distributor to any producer, including any association of producers, or the receipt by a producer, including any association of producers, from a distributor, of a lesser price for any fluid milk or fluid cream or fluid skim milk which is distributed to any person, including agencies of the federal, state or local government, located upon property within the geographical limits of many marketing area for less than the minimum prices established by the director to be paid by distributors to producers for fluid milk, or the milk fat and skim milk contained therein, or fluid cream or fluid skim milk for said marketing area. The provisions of this section with respect to fluid milk shall apply whether or not such fluid milk is received by the distributor as whole milk, or as skim milk and fluid cream, or either, or as any other derivatives of such fluid milk which are reconstituted into such fluid milk, or fluid cream or fluid skim milk for market usage, and whether or not a fluid cream plan has been established for the marketing area.

4280.1. Each such plan shall contain provisions for prohibiting producers and distributors from engaging in the unfair practices hereinafter set forth:

(a) The payment or gift or the offer or promise of any payment or gift of money or other thing of value, directly or indirectly or through any agent or other intermediary, to any person with the purpose or design of inducing such person to become a wholesale customer of any distributor.

4281. Each such plan shall contain provisions whereby the director designates and prescribes or provides methods for designating or prescribing minimum prices to be paid by distributors to producers, for fluid milk in the various classes; provided, however, that the prices so designated or prescribed shall be in a reasonable and sound economic relationship with the price of manufacturing milk; provided, further, that in determining such economic relationship the director shall take into consideration all of the relevant factors in such relationship, including but not limited to: (a) the reasonableness and economic soundness of manufacturing milk prices in relation to the costs of producing manufacturing milk; (b) the additional costs of producing and marketing fluid milk over and above costs of producing and marketing manufacturing milk; and (c) current and prospective supplies of fluid milk in relation to current and prospective demands for such fluid milk for all purposes; provided, further, that in designating and prescribing, or in providing methods for designating or prescribing such prices, the director shall also take into consideration all of the purposes, policies, and standards contained in Sections 4200, 4201, 4204, 4205 and 4230; and provided further, the director finds that such prices will insure consumers an adequate and continuous supply of pure, fresh, wholesome milk at fair and reasonable prices, including a reasonable estimate of the additional supply which is needed to provide for normal fluctuations in production and in consumer demand for fluid milk, cream, and skim milk for such marketing area.

4282. Each such stabilization and marketing plan shall contain provisions whereby the director designates and prescribes or provides methods for designat-

ing or prescribing minimum prices to be paid by distributors to producers for fluid milk which is received by a distributor in one marketing area and separated in that area into fluid cream and fluid skim milk when such fluid cream or fluid skim milk or both are transported for utilization into another marketing area or into a locality in which no stabilization or marketing plan is in effect. This section shall not be construed to affect the provisions of this chapter relating to the establishment of minimum wholesale and minimum retail prices for fluid cream.

4283. Each such plan shall contain provisions whereby the director shall provide methods for the establishment of minimum prices for fluid milk, fluid cream, or the milk fat or fluid skim milk components of such fluid milk or fluid skim milk, received within a marketing area regardless of whether such fluid milk, fluid cream, or the milk fat or fluid skim milk components of such fluid milk or fluid skim milk, is subsequently sold or distributed within or without such marketing area within the jurisdiction of the State of California, and may contain such provisions whether or not such fluid milk, fluid cream, or the milk fat or fluid skim milk components of such fluid milk or fluid skim milk is subsequently sold or distributed without the jurisdiction of the State of California. Such stabilization and marketing plans shall provide for the establishment of prices for fluid milk, fluid cream, or the milk fat or fluid skim milk components of such fluid milk or fluid skim milk, whether or not such fluid milk, fluid cream, or the milk fat or fluid skim milk components of such fluid milk or fluid skim milk, is subsequently sold or distributed in another marketing area within the State of California where a stabilization and marketing plan is in effect. The

stabilization and marketing plan shall provide that producers shall be paid not less than the minimum prices established for the marketing area wherein such fluid milk, fluid cream, or the milk fat or fluid skim milk components of such fluid milk or fluid skim milk, is ultimately sold or distributed, and shall further provide that in the event such fluid milk, fluid cream, of the milk fat or fluid skim milk components of such fluid milk, fluid skim milk, is subsequently sold or distributed in any place within the jurisdiction of the State of California where no stabilization and marketing plan is in effect, then such fluid milk, fluid cream, or the milk fat or fluid skim milk components of such fluid milk or fluid skim milk, shall be paid by the distributor to the producer thereof at not less than the average of prices paid by distributors, whose plants are located within such area, to producers for fluid milk, fluid cream, or the milk fat or fluid skim milk components of such fluid milk, but in the event no plants are located within said area, then the price which shall be paid by the distributor to the producer thereof shall not be less than the average of prices paid by distributors to producers for fluid milk, fluid cream, or fluid skim milk, or the milk fat or fluid skim milk components of such fluid milk, at the plants in the nearest marketing areas adjacent to the area where such fluid milk, fluid cream, or the milk fat or fluid skim milk components of such fluid milk or fluid skim milk, is sold or distributed as established by the stabilization and marketing plans in effect in such adjacent marketing areas.

Article 10. Minimum Wholesale and Retail Prices

4350. Pursuant to the declaration and statements of facts, policy and purposes set forth in this chapter,

the director is hereby vested with the additional administrative duty and authority to prescribe and enforce minimum wholesale and minimum retail prices for fluid milk, or fluid cream, or both, as hereinafter set forth, and to enforce the provisions of this article.

4351. In all marketing areas wherein a stabilization and marketing plan for fluid milk is in effect or is hereafter established under the provisions of this chapter, the director shall designate and prescribe, or provide methods for designating and prescribing, minimum wholesale and minimum retail prices for fluid milk, including pasteurized concentrated milk, pursuant to the provisions of this article. In all marketing areas wherein the director has, under a stabilization and marketing plan for fluid milk, prescribed minimum prices to be paid by the distributors for fluid cream, or fluid skim milk, or either or both, the director may designate and prescribe, or provide methods for designating and prescribing minimum wholesale and minimum retail prices for fluid cream, or fluid skim milk, or either or both, pursuant to the provisions of this article. The term "fluid milk" as used in this chapter shall, unless the context otherwise requires or indicates, mean and include the term "fluid skim milk" in the application of this chapter to any marketing area in which the director has exercised his discretion to designate and prescribe, or provide methods for designating and prescribing, minimum wholesale and minimum retail prices for fluid skim milk.

4351.3. In order to meet changes and variations in economic conditions affecting the distribution of fluid milk within a marketing area and to facilitate the consolidation or modification of marketing areas to include within each such area all contiguous territory

wherein conditions of production of fluid milk are reasonably uniform, the director may establish minimum wholesale and minimum retail prices pursuant to this chapter upon a zone basis within the boundaries of a marketing area. Such zones may be established only after a public hearing and shall be established only upon the basis of cost differentials in the distribution of fluid milk between the zones so established within a marketing area as such cost differentials are determined by cost surveys.

4351.5. The director shall terminate the minimum wholesale and minimum retail prices in effect in any marketing area without notice or hearing at any time that there ceases to be a stabilization and marketing plan in force and effect in such marketing area.

4352. Minimum wholesale prices, as used herein, shall mean prices at which fluid milk or fluid cream, or both, shall be sold by distributors to retail stores including the prices at which fluid milk or fluid cream shall be sold by distributors to retail stores, restaurants, confectioneries and other places for consumption on the premises but excluding, however, the prices at which fluid milk or fluid cream, or both, shall be sold by distributors to retail stores owned or operated by such distributor. Minimum wholesale prices, as used herein, includes prices at which fluid milk or fluid cream, or both, shall be sold by distributors to other distributors, other than in bulk, which prices may vary from the minimum prices established for sales by distributors to other wholesale customers and which prices shall be known as "subdistributor prices." A subdistributor price shall be established for each marketing area and when fluid milk or fluid cream, or both, is purchased, other than in bulk, by one distributor from another distributor for sale in a mar-

keting area other than the marketing area where purchased the price paid shall not be less than the minimum subdistributor price for the marketing area in which the fluid milk or fluid cream, or both, is ultimately sold.

4353. Minimum retail prices, as used herein, shall mean minimum prices at which fluid milk or fluid cream, or both, shall be sold by distributors and retail stores to consumers.

4354. In determining minimum wholesale prices and minimum retail prices in any marketing area, the director shall first make an investigation in such marketing area to establish such facts as shall be necessary to permit him to carry out the intent of this article within the standards herein prescribed. In making such investigation, the director may examine the books and records of distributors and retail stores in such marketing area and shall hold one or more public hearings, take testimony and may subpoena witnesses. All testimony received at such hearings shall be under oath. Notice of any hearing held by the director, pursuant to this article, shall be given by the director to every distributor and retail store in such marketing area whose name appears upon the records of the Department of Agriculture or who files a request for the same with the department, by mail or by publication for the time and in the manner prescribed in Section 4273. At the time of giving such notice the director shall mail with such notice to each person to whom such notice is required to be given a written statement showing:

(a) Whether such hearing is held at the instance of the director or in response to written request;

(b) The purpose and scope of such hearing;

(c) A summary of changes in economic factors to the extent such changes have been ascertained by the director in connection with the hearing prior to giving notice thereof;

(d) The proposed minimum prices for fluid milk, fluid cream, or both, together with any other provisions which the director then has under consideration or may then propose to establish for such marketing area, based upon such investigation, cost surveys or examinations, or a statement that the director has not, prior to giving notice of the hearing, formulated any such proposed minimum prices or other provisions.

A record of any and all hearings held by the director, pursuant to this article, shall be made and filed in the office of the director and shall, at all times, be available to inspection by any interested person.

4355. In determining minimum wholesale and minimum retail prices for fluid milk or fluid cream, or both, for any marketing area, the director shall take into consideration the following economic factors operative in such marketing area in addition to other matters required by this chapter to be taken into consideration by him:

(a) The quantities of fluid milk or fluid cream, or both, distributed in such marketing area.

(b) The quantities of fluid milk or fluid cream, or both, normally required by consumers in such marketing area.

(c) The estimated purchasing power of consumers in such marketing area.

(d) The cost of fluid milk or fluid cream, or both, in such marketing area to distributors and retail stores, which in all cases shall be, respectively, the prices paid by distributors to producers and the mini-

mum wholesale prices, as established pursuant to this chapter.

(e) The reasonably necessary cost of handling fluid milk or fluid cream, or both, incurred by distributors, including all costs of hauling, processing, selling and delivering and reasonable return on necessary capital investment, for each of the several methods of distribution used in such marketing area in accomplishing such hauling, processing, selling and delivery, excluding costs which are not reasonably necessary to efficient operation, as such costs are determined by impartial cost surveys, or examination of the books and records, or both, of all, or such portion of the distributors in such marketing area as are reasonably determined by the director to be sufficiently representative to indicate the reasonably necessary costs of sufficient efficient distribution for such marketing area.

(f) The estimated amount of the available capacity for processing and distributing fluid milk or fluid cream, or both, of distributors in such marketing area and the estimated extent to which such available capacity is being used by such distributors.

(g) The reasonably necessary cost of handling fluid milk or fluid cream, or both, incurred by retail stores, as such costs are determined by impartial cost surveys, or examination of the books and records, or both, of such portion of the retail stores in such marketing areas as are reasonably determined by the director to be sufficiently representative to indicate such costs of all retail stores in such marketing area. In determining such costs incurred by retail stores handling commodities in addition to fluid milk or fluid cream, or both, the director shall determine the cost of doing business for each such representative retail store and

for such purpose shall consider all costs and expenses of doing business including depreciation on inventory and equipment. In the absence of satisfactory evidence to the contrary, the cost of handling such fluid milk or fluid cream, or both, shall be presumed to be the same percentage as the cost of doing business of such retail store in conducting its entire business.

4355.5. In determining minimum wholesale and minimum retail prices for any marketing area, the prices paid by distributors to producers as established pursuant to this chapter shall also be considered as the cost of fluid milk, fluid skim milk, or fluid cream to any association of producers, or other cooperative association, incorporated or unincorporated, engaged in the distributions of fluid milk, fluid skim milk, or fluid cream.

4357. The director shall take into consideration the reasonably necessary cost of handling fluid milk or fluid cream, or both, incurred by distributors in hauling, processing, selling and delivering to restaurants, confectioneries or other places for consumption on the premises wherein it is required by law that service to customers be made from the original container or from milk-dispersing devices which have been approved for such use by the director in accordance with Section 461. In fixing the minimum wholesale price to be paid distributors by such persons, the director shall take into consideration such legal requirements and other reasonably necessary factors and distribution costs peculiarly affecting service to such persons, and if the director reasonably determines that such reasonably necessary factors and costs require that the minimum wholesale prices to be paid distributors by such persons vary from the minimum prices established for other wholesale customers, the prices established to be

paid by such persons may vary accordingly. The prices established to be paid by such persons for milk sold in containers designed for use in milk-dispensing devices approved for such use by the director under Section 461 may vary from any of the minimum wholesale prices referred to in this section if the director reasonably determines that the necessary factors and costs involved in such sales require that these prices vary from any of the minimum wholesale prices referred to in this section. Minimum wholesale price schedules for fluid milk, fluid cream, or both, established by the director, may provide for quantity discounts, such discounts to be no more than those which give effect to delivery cost differences in the delivery of single orders of varying quantities of fluid milk, fluid cream, or both, to wholesale customers. Minimum retail price schedules for fluid milk, fluid cream, or both, established by the director for home delivery, may provide for either quantity discounts or delivery service charges, such discounts or service charges to be no more than those which give effect to delivery cost differences in the home delivery of single orders of varying quantities of fluid milk, fluid cream, or both, to retail consumers. Minimum retail price schedules for fluid milk, fluid cream, or both, established by the director for retail stores may provide for quantity discounts, such discounts to be no more than those which give effect to store handling cost differences in the sale of single orders of varying quantities of fluid milk, fluid cream, or both, to retail consumers.

4359. The director shall make or cause to be made such cost surveys or examinations, or both, as are necessary in order to enable him to determine any changes in costs, and in accordance with the provisions of this article, after notice and public hearing called

and held in the same manner prescribed in Section 4354, shall amend any minimum wholesale or minimum retail prices established under the provisions of this chapter in the event that he finds that any such price is, or that any such prices are, no longer in conformity with the standards prescribed therefor, or will not tend to effectuate the purposes of this chapter.

4360. Following such hearings, investigation, surveys or examinations authorized above, the director shall establish minimum wholesale and minimum retail prices for such marketing area for distributors therein, and minimum retail prices for retail stores therein, which minimum wholesale and minimum retail prices shall be sufficient, but not more than reasonably sufficient, to cover costs, as such costs are described in Section 4355 of this code, according to method of distribution, and reasonable return upon necessary capital investment, and shown to the director by the facts available to the director from the hearings, investigation, surveys or examinations for such marketing area required in this chapter; and the director shall declare such prices effective in the same manner as that prescribed in this chapter for declaring producer prices effective; provided, however, that whenever the director shall determine from credible evidence that any prices established as hereinabove set forth will not or would not conform to and effectuate the legislative declarations, purposes and intent set forth in this chapter, then he shall instead establish minimum wholesale or minimum retail prices which are higher or lower than those sufficient to cover said costs and reasonable return on capital investment, upon the condition that he shall determine in his judgment and shall find in writing with respect to such higher or lower minimum prices:

(a) That such minimum prices will tend to maintain in the business of distributing fluid milk and fluid cream, or both, such reasonably efficient retail stores and distributors of fluid milk and fluid cream, or both, in such marketing area as the director finds necessary to insure to consumers in such marketing area sufficient distribution facilities to supply the quantity of fluid milk or fluid cream, or both, required by such consumers without requiring such consumers to pay more for their supplies of such fluid milk, or fluid cream, or both, than is necessary to maintain adequate and efficient distribution facilities in such marketing area.

(b) That such minimum prices will not tend to induce or authorize the development of unfair trade practices, unfair competition, conditions of monopoly or combinations in restraint of trade, and that such minimum prices will tend to encourage the orderly and efficient marketing of fluid milk or fluid cream, or both.

4361. No distributor shall sell to any retail store, restaurant, confectionery or other place for consumption on or off the premises, or to any consumer, and no retail store, restaurant, confectionery or other place for consumption on or off the premises, shall purchase from any distributor or sell to any consumer, any fluid milk or fluid cream, or either of them, at less than the prices as established by the director under the provisions of this article. The use or attempted use of any method, device or transaction whereby any distributor sells or offers or agrees to sell to any retail store, restaurant, confectionery or other place for consumption on or off the premises, or to any consumer, or any retail store, restaurant, confectionery or other place for consumption on or

off the premises buys or offers or agrees to buy from any distributor, or sells or offers or agrees to sell to any consumer, fluid milk or fluid cream, or either, at a price less than that established by the director under the provisions of this article, is prohibited whether such method, device or transaction applies directly to fluid milk, fluid cream or either, or applies to or is used in connection with the sale or handling of any commodity, product or article. Prohibited methods, devices or transactions shall include, but not be limited to, any one or more of the following: discounts, rebates, free services, advertising allowances, leases of refrigeration or other equipment, gifts, or payments, allowances or credits made or given for, or in connection with, the return of containers or other property, unless such payment, allowance or credit is a repayment of a deposit or charge, in excess of the price established by the director under the provisions of this article, paid by a wholesale customer, or by a consumer, for the return of such containers or other property.

A distributor, or retail store, restaurant, confectionery or other place for consumption on or off the premises shall be considered to have violated the provisions of this section if it engages in such violation directly or through an agent, employee, or subsidiary or affiliated company or corporation. For purposes of this section subsidiary or affiliated company or corporation includes, but is not limited to, companies or corporations controlled by the distributor, or retail store, restaurant, confectionery or other place for consumption on or off the premises, directly or indirectly, through ownership of issued capital stock or otherwise.

4361.5. The director is hereby authorized and directed to adopt and promulgate rules and regulations for the proper administration and enforcement of the provisions of Section 4361 of this code. Any such rule or regulation or amendment thereof shall be adopted and promulgated by the director in conformity with the provisions of Chapter 4 of Part 1 of Division 3 of Title 2 of the Government Code.

4362. Every distributor in any marketing area wherein an order establishing minimum wholesale and minimum retail prices is in effect, except as otherwise herein provided, shall file with the director schedules and any amendments thereto setting forth the prices at which each such distributor is selling or offering or agreeing to sell fluid milk, fluid cream and dairy products, excluding butter, cheese other than cottage cheese, canned milk, powdered milk, casein and ice cream, in such marketing area. Such filings shall be made in such office of the director as he shall designate. Such prices shall not become effective until the fifth day after filing. Evidence of any sale of, or offer or agreement to sell such fluid milk, fluid cream or dairy products by a distributor, made as a part of, or in connection with the sale of, or offer or agreement to sell fluid milk and fluid cream, or both, in a marketing area where an order establishing minimum wholesale and minimum retail prices is in effect, at less than the prices theretofore filed with the director by such distributor pursuant to the provisions of this section, shall constitute prima facie proof of a violation of this section. Offers and agreements to sell, as used herein, shall include offers and agreements which are conditional, or which shall become effective, upon the filing thereafter of amended prices by the distributor making such offer. Upon

receipt of such amendments, the director shall forthwith date, file and index the same in such manner that the information therein contained shall at all times be kept current and be readily available to any interested person desiring to inspect the same. Any other distributor in the marketing area may meet any such prices so filed: provided, that such distributor shall file with the director a schedule of prices not exceeding the prices so met by him within 24 hours after meeting the same. In the event that any distributor shall elect to make a bid for the sale of fluid milk, fluid cream or other dairy products, excluding butter, cheese other than cottage cheese, canned milk, powdered milk, casein and ice cream, to any city, county, state or federal institution, installation, or facility within the jurisdiction of this State at prices less than the prices applicable to sales to such institutions previously filed with the director by such distributor, then such distributor at its election, in lieu of filing a schedule of amended prices with the director, as hereinabove provided, may deliver to the director, not less than five days before the day scheduled for the opening of bids, a schedule showing the prices contained in such bid, which schedule shall be contained in a sealed envelope with information written or typed on such envelope showing the name of the distributor, the name of the city, county, state, or federal institution, installation, or facility to which fluid milk, fluid cream or such other dairy products are proposed to be supplied as shown in such bid and the date, time and place scheduled for the opening of bids. The envelope containing such schedule shall be stamped by the director showing the time and date received and shall not be opened by the director until after the date

and time scheduled for the opening of bids and shall then be opened and such schedule shall be filed and indexed by the director and shall constitute such distributor's amended schedule of prices covering sales to city, county, state, and federal institutions, installation, or facility and shall be available to any interested person desiring to inspect the same.

Article 11. Distributors' Licenses, Fees and Bonds

4375. No distributor shall deal in fluid milk or fluid cream without first having obtained a license from the director. The special licenses provided in this section are in addition to any and all licenses required by any section of Division 4, Agricultural Code, or any law or ordinance of any county or municipality of this State. Applications for the licenses herein provided shall be made on forms prescribed by the director, shall be accompanied by an application fee of three dollars ($3), and shall state the name and address of the applicant and such details as to the nature of the applicant's business as the director may require. Such applicant shall further satisfy the director of his or its character, responsibility and good faith in seeking to carry on the business stated in the application. Licenses shall be issued for a period of twelve (12) months from the first day of each year or for the remainder of the calendar year from the date of issuance. Application for renewal of a license for the following year by a licensee, together with the application fee of three dollars ($3), shall be made prior to the expiration date of the license held, and if not so made the applicant shall pay an additional sum equal to 100 percent of the application fee before such license shall be issued.

4376. Every distributor before purchasing any fluid milk or fluid cream from a producer must execute and deliver to the director a surety bond in the minimum sum of one thousand dollars ($1,000), executed by the applicant as principal and by a surety company qualified and authorized to do business in this State as surety. Said bond shall be upon a form approved by the director, and shall be conditioned upon the payment in the manner required by this chapter, of all amounts due to producers for fluid milk and fluid cream purchased by such licensee or applicant during the license year. Said bond shall be to the State in favor of every producer of fluid milk and fluid cream. In case of failure by a distributor to pay any producer or producers for fluid milk or fluid cream in the manner required by this chapter, the director shall proceed forthwith to ascertain the names and addresses of all producer-creditors of such distributor, together with the amounts due and owing to them and each of them by such distributor, and shall request all such producer-creditors to file a verified statement of their respective claims with the director. Thereupon the director shall bring an action on the bond on behalf of said producer-creditors. Upon any action being commenced upon said bond, the director may require the filing of a new bond and immediately upon a recovery in any action upon such bond, such distributor shall file a new bond, and upon failure to file same within ten (10) days in either case, such failure shall constitute grounds for the revocation or suspension of the license of such distributor. In the event that recovery upon the bond is not sufficient to pay all of the claims as finally determined and adjudged by the court, any such amount recovered shall be divided pro rata among said producer-creditors.

4377. The minimum bond of one thousand dollars ($1,000) shall be required of distributors purchasing an average daily quantity of fluid milk of less than 100 gallons; distributors purchasing an average daily quantity of 100 gallons and less than 200 gallons during any calendar month during a license year must post a bond in the amount of two thousand dollars ($2,000); distributors purchasing an average daily quantity of 200 gallons and less than 300 gallons during any calendar month during a license year must post a bond in the amount of three thousand dollars ($3,000); distributors purchasing an average daily quantity of 300 gallons or more during any calendar month during a license year shall post a bond in the sum of five thousand dollars ($5,000).

Article 14. Penalties

4410. (a) The violation of any provision of this chapter, or of any provision of any stabilization and marketing plan or any order of the director establishing minimum wholesale and minimum retail prices for fluid milk or fluid cream formulated under the provisions of this chapter, or of any of the unfair practices set forth in this chapter, or of any rule or regulation duly adopted and promulgated by the director under Section 4361.5, is a misdemeanor, and is furthermore ground for revocation or suspension of license in the manner set forth in this chapter. The unfair practice provisions described in this chapter are hereby declared to apply to all distributors, whether or not a plan is in effect in the area in which a distributor is licensed or carries on business.

(b) Every distributor must pay for fluid milk or fluid cream delivered to him or it at the time and in the manner specified in the contract with the pro-

ducer; failure to make such payment is hereby declared to be a violation of this chapter, and ground for refusal, suspension or revocation of license in the manner set forth in this chapter.

(e) Any person who violates any provision of this chapter or of a stabilization and marketing plan or any order of the director establishing minimum wholesale and minimum retail prices for fluid milk or fluid cream or any rule or regulation duly adopted and promulgated by the director under Section 4361.5 shall be liable civilly in the sum of five hundred dollars ($500) for each and every violation, such sum to be recovered by the director in any court of competent jurisdiction. All sums recovered under this section shall be deposited in the State Treasury to the credit of the Department of Agriculture Fund.

Article 15. Disciplinary Proceedings

4415. The director may refuse to grant any license herein provided and may revoke or suspend any such license as the case may require when he is satisfied that any applicant or licensee has violated any provision of this chapter, or any provision of any stabilization and marketing plan formulated under the provisions of this chapter, or of any order of the director establishing minimum wholesale and minimum retail prices for fluid milk or fluid cream formulated under the provisions of this chapter, or any rule or regulation duly adopted and promulgated by the director under Section 4361.5. The proceedings shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all the powers granted therein.

The decision may include an order refusing, revoking or suspending the license applied for or held by

the respondent, or affixing such other conditional and probationary orders as may be proper for the enforcement of this chapter or any provision of any stabilization and marketing plan formulated under the provisions of this chapter, or of any order of the director establishing minimum wholesale and minimum retail prices for fluid milk or fluid cream formualted under the provisions of this chapter, or of any rule or regulation duly adopted and promulgated by the director under Section 4361.5.

After any decision including any conditional or probationary orders, should respondent fail, refuse or neglect to comply with any such orders, the director may suspend or revoke the license in accordance with the procedure provided in this section.

Previous violation by any applicant, or by any person connected with said applicant, of any provision of this chapter, or of any provision of any stabilization and marketing plan formulated under the provisions of this chapter, or of any order of the director establishing minimum wholesale and minimum retail prices for fluid milk or fluid cream, formulated under the provisions of this chapter, or any rule or regulation duly adopted and promulgated by the director under Section 4361.5, shall be good and sufficient ground for denial, revocation or suspension of a license.

4416. Whenever the director is satisfied, either by investigation or after hearing, that a distributor is unable to pay for fluid milk and or fluid cream purchased from producers, and is further satisfied that to permit the distributor to continue to purchase and receive fluid milk and or fluid cream from producers would be likely to cause serious and irreparable loss to producer-creditors and other producers, then the

director within his discretion may thereupon and forthwith shorten the time for hearing that is provided for in Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, and thereupon may issue an order to show cause why the license of said distributor should not be forthwith suspended or revoked; provided, however, that the time of notice of said hearing shall in no event be less than five days. At such hearing the distributor proceeded against shall be ordered to show cause why his or its license should not be suspended or revoked or continued under such conditions and provisions, if any, as the director may consider just and proper and for the protection of the best interests of the producer creditors and producers from whom the distributor has been and is receiving fluid milk and or fluid cream. Following such hearing, the decision of the director shall become effective at his discretion.

Said hearing, in the case of such emergency, may be called upon written notice, said notice to be served personally or by mail on the distributor involved and may be held at the nearest office of the director or at such place as may be most convenient in the discretion of the director for the attendance of all parties involved.

Article 16. Construction and Interpretation

4420. (a) The Legislature hereby declares that Chapter 17 of Division 6 of this code is intended to formulate a comprehensive scheme for the regulation of marketing and distribution of fluid milk and fluid cream. If, however, any provision of, or addition or amendment to, said Chapter 17 of Division 6 of this code, either as originally enacted in 1935 at the Fifty-

first Regular Session of the California Legislature, or as amended or added to or recodified or re-enacted at any subsequent session of the California Legislature, should be held to be unconstitutional, the unconstitutionality of such provision shall not affect any other provision of said chapter.

(b) If any article, section, subsection, sentence, clause or phrase of any provision of Chapter 17 of Division 6 of this code is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining provisions of said chapter. The Legislature hereby declares that it would have enacted each article, section, subsection, sentence, clause or phrase of said chapter irrespective of the fact that one or more other articles, sections, subsections, sentences, clauses or phrases be declared unconstitutional.

POLITICAL CODE SECTION 34 AS AMENDED BY CHAPTER 710, STATUTES OF 1939, PAGE 2231

The Legislature consents to the purchase or condemnation by the United States of any tract of land within this State for the purpose of erecting forts, magazines, arsenals, dockyards, and other needful buildings, upon the express condition that all civil process issued from the courts of this State, and such criminal process as may issue under the authority of this State, against any person charged with crime, may be served and executed thereon in the same mode and manner and by the same officers as if the purchase or condemnation had not been made and upon the further express condition that the State reserves its entire power of taxation with respect to such tracts

of land and may levy and collect all taxes now or hereafter imposed in the same manner and to the same extent as if this consent had not been granted.

The authority to serve civil and criminal process and power to tax hereinabove reserved to the State in the case of the purchase or condemnation by the United States of any tract of land within this State shall, any law to the contrary notwithstanding, also be reserved to the State with respect to any tract or land over which any jurisdiction is ceded or granted by the State to the United States under any law of this State now in effect or which may hereafter be adopted, the authority and power herein reserved by the State to be exercised in the same manner and to the same extent as if such jurisdiction had not been ceded or granted by the State to the United States.

Statutory History

1872 Pol. C. sec. 34, eff. March 12, 1872, amended by Stats. 1939, Ch. 710, p. 2231, codified into Gov. C. sec. 111, eff. Aug. 4, 1943, by Stats. 1943, Ch. 134, p. 1009, until repealed eff. Sept. 19, 1947, by Stats. 1947, Ch. 1532, p. 3163.

STATUTES OF 1897, CHAPTER 56, PAGE 51

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. The State of California hereby cedes to the United States of America exclusive jurisdiction over all lands within this State now held, occupied, or reserved by the Government of the United States for military purposes or defense, or which may hereafter be ceded or conveyed to said United States for such purposes; *provided*, that a sufficient description

by metes and bounds and a map or plat of such lands be filed in the proper office of record in the county in which the same are situated; *and provided further*, that this State reserves the right to serve and execute on said lands all civil process, not incompatible with this cession, and such criminal process as may lawfully issue under the authority of this State against any person or persons charged with crimes committed without said lands.

SEC. 2. This Act shall take effect immediately.

Statutory History

Stats. 1897, Ch. 56, p. 51, eff. March 2, 1897, codified into Gov. C. sec. 114, eff. Aug. 4, 1943, by Stats. 1943, Ch. 134, p. 898, until repealed eff. Sept. 19, 1947, by Stats. 1947, Ch. 1532, p. 3163.

SECTIONS 111 AND 114, GOVERNMENT CODE

111. The Legislature consents to the purchase or condemnation by the United States of any tract of land within the State for the purpose of erecting forts, magazines, arsenals, dockyards, and other needful buildings, reserving the authority to serve and execute process and the State's entire power of taxation as provided in this article.

114. The State cedes to the United States exclusive jurisdiction over all lands within the State held, occupied, or reserved on March 2, 1897 by the United States for military purposes or defense, and over all land which thereafter has been or which may be ceded or conveyed to the United States for such purposes, reserving the authority to serve and execute process, and the State's entire power of taxation. A sufficient description by metes and bounds and a map or plat of

the lands shall first be filed in the proper office of record in the county in which the lands are situated.

(Stats. 1943, Chapter 134, pp. 898, 899)

GOVERNMENT CODE SECTION 113 AS AMENDED BY STATUTES OF 1947, CHAPTER 1532, PAGE 3164

SEC. 2. Section 113 of said code is amended to read:

113. The State reserves the administration of the criminal law of the State with respect to any land over which any jurisdiction has been or may be ceded or conveyed to the United States, during the time the United States is the owner thereof."

GOVERNMENT CODE SECTION 126 AS AMENDED BY STATUTES OF 1947, CHAPTER 1532, PAGE 3163

SECTION 1. Section 126 of the Government Code is amended to read:

126. Notwithstanding any other provision of law, general or special, the Legislature of California consents to the acquisition by the United States of land within this State upon and subject to each and all of the following express conditions and reservations, in addition to any other conditions or reservations prescribed by law:

(a) The acquisition must be for the erection of forts, magazines, arsenals, dockyards, and other needful buildings, or other public purpose within the purview of Clause 17 of Section 8 of Article I of the Constitution of the United States, or for the establishment, consolidation and extension of national forests under the provisions of the act of Congress approved

March 1, 1911, (36 Stat. 961) known as the 'Weeks Act';

(b) The acquisition must be pursuant to and in compliance with the laws of the United States;

(c) The United States must in writing have assented to acceptance of jurisdiction over the land upon and subject to each and all of the conditions and reservations in this section prescribed;

(d) The conditions prescribed in subdivisions (a), (b), and (c) of this section must have been found and declared to have occurred and to exist, by the State Lands Commission, and the commission must have found and declared that such acquisition is in the interest of the State, certified copies of its orders or resolutions making such findings and declarations to be filed in the office of the Secretary of State and recorded in the office of the county recorder of each county in which any part of the land is situate;

(e) In granting this consent, the Legislature and the State reserve jurisdiction on and over the land for the execution of civil process and criminal process in all cases, and the State's entire power of taxation including that of each state agency, county, city, city and county, political subdivision or public district of or in the State; and reserve to all persons residing on such land all civil and political rights, including the right of suffrage, which they might have were this consent not given.

(f) This consent continues only so long as the land continues to belong to the United States and is held by it in accordance and in compliance with each and all of the conditions and reservations in this section prescribed.

The finding and declaration of the State Lands Commission provided for in subdivision (d) of this section shall be made only after a public hearing. Notice of such hearing shall be published once in a newspaper of general circulation in each county in which the land or any part thereof is situated and a copy of such notice shall be personally served upon the clerk of the board of supervisors of each such county. The State Lands Commission shall make rules and regulations governing the conditions and procedure of such hearings, which shall provide that the cost of publication and service of notice shall be borne by the owner or transferee of the property.

The provisions of this section do not apply to any land or water areas heretofore or hereafter acquired by the United States for migratory bird reservations in accordance with the provisions of Sections 375 to 380, inclusive, of the Fish and Game Code.

UNITED STATES CONSTITUTION, ARTICLE I, SECTION 8, CLAUSE 17

"The Congress shall have power . . .

"To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;"

ARMED SERVICES PROCUREMENT ACT OF 1947, 62 STATUTES 21, 10 U.S.C. 2301 et seq.

AN ACT

To facilitate procurement of supplies and services by the Department of the Army, the Navy and the Air Force, the Coast Guard, and the National Advisory Committee for Aeronautics, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Armed Services Procurement Act of 1947."

SEC. 2. (a) The provisions of this Act shall be applicable to all purchases and contracts for supplies or services made by the Department of the Army, the Department of the Navy, the Department of the Air Force, the United States Coast Guard, and the National Advisory Committee for Aeronautics (each being hereinafter called the agency), for the use of any such agency or otherwise, and to be paid for from appropriated funds.

(b) It is the declared policy of the Congress that a fair proportion of the total purchases and contracts for supplies and services for the Government shall be placed with small business concerns. Whenever it is proposed to make a contract or purchase in excess of $10,000 by negotiation and without advertising, pursuant to the authority of paragraph (7) or (8) of section 2 (c) of this Act, suitable advance publicity, as determined by the agency head with due regard to the type of supplies involved and other relevant considerations, shall be given for a period of at least fifteen days, wherever practicable, as determined by the agency head.

(c) All purchases and contracts for supplies and services shall be made by advertising, as provided in section 3, except that such purchases and contracts may be negotiated by the agency head without advertising if—

(1) determined to be necessary in the public interest during the period of a national emergency declared by the President or by the Congress;

(2) the public exigency will not admit of the delay incident to advertising;

(3) the aggregate amount involved does not exceed $1,000;

(4) for personal or professional services;

(5) for any service to be rendered by any university, college, or other educational institution;

(6) the supplies or services are to be procured and used outside the limits of the United States and its possessions;

(7) for medicines or medical supplies;

(8) for supplies purchased for authorized resale;

(9) for perishable subsistence supplies;

(10) for supplies or services for which it is impracticable to secure competition;

(11) the agency head determines that the purchase or contract is for experimental, developmental, or research work, or for the manufacture or furnishing of supplies for experimentation, development, research, or test: *Provided*, That beginning six months after the effective date of this Act and at the end of each six-month period thereafter, there shall be furnished to the Congress a report setting forth the name of each contractor with whom a contract has been entered into pursuant to this subsection (11) since the date of the last such report, the amount of the contract, and, with due

consideration given to the national security, a description of the work required to be performed thereunder;

(12) for supplies or services as to which the agency head determines that the character, ingredients, or components thereof are such that the purchase or contract should not be publicly disclosed;

(13) for equipment which the agency head determines to be technical equipment, and as to which he determines that the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts and that such standardization and interchangeability is necessary in the public interest;

(14) for supplies of a technical or specialized nature requiring a substantial initial investment or an extended period of preparation for manufacture, as determined by the agency head, when he determines that advertising and competitive bidding may require duplication of investment or preparation already made, or will unduly delay procurement of such supplies;

(15) for supplies or services as to which the agency head determines that the bid prices after advertising therefor are not reasonable or have not been independently arrived at in open competition: *Provided*, That no negotiated purchase or contract may be entered into under this paragraph after the rejection of all bids received unless (A) notification of the intention to negotiate and reasonable opportunity to negotiate shall have been given by the agency head to each responsible bidder, (B) the negotiated price is lower than the lowest rejected bid price of a responsible bidder, as deter-

mined by the agency head, and (C) such negotiated price is the lowest negotiated price offered by any responsible supplier;

(16) the agency head determines that it is in the interest of the national defense that any plant, mine, or facility or any producer, manufacturer, or other supplier be made or kept available for furnishing supplies or services in the event of a national emergency, or that the interest either of industrial mobilization in case of such an emergency, or of the national defense in maintaining active engineering, research and development, are otherwise subserved: *Provided*, That beginning six months after the effective date of this Act and at the end of each six-month period thereafter, there shall be furnished to the Congress a report setting forth the name of each contractor with whom a contract has been entered into pursuant to this subsection (16) since the date of the last such report, the amount of the contract, and, with due consideration given to the national security, a description of the work required to be performed thereunder; or

(17) otherwise authorized by law.

(d) If in the opinion of the agency head bids received after advertising evidence any violation of the antitrust laws he shall refer such bids to the Attorney General for appropriate action.

(e) This section shall not be construed to (A) authorize the erection, repair, or furnishing of any public building or public improvement, but such authorization shall be required in the same manner as heretofore, or (B) permit any contract for the construction or repair of buildings, roads, sidewalks, sewers, mains, or similar items to be negotiated without advertising as required by section 3, unless such contract

is to be performed outside the continental United States or unless negotiation of such contract is authorized by the provisions of paragraph (1), (2), (3), (10), (11), (12), or (15) of subsection (c) of this section.

SEC. 3. Whenever advertising is required—

(a) The advertisement for bids shall be a sufficient time previous to the purchase or contract, and specifications and invitations for bids shall permit such full and free competition as is consistent with the procurement of types of supplies and services necessary to meet the requirements of the agency concerned.

(b) All bids shall be publicly opened at the time and place stated in the advertisement. Award shall be made with reasonable promptness by written notice to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered: *Provided*, That all bids may be rejected when the agency head determines that it is in the public interest to do so.

SEC. 4. (a) Except as provided in subsection (b) of this section, contracts negotiated pursuant to section 2 (c) may be of any type which in the opinion of the agency head will promote the best interests of the Government. Every contract negotiated pursuant to section 2 (c) shall contain a suitable warranty, as determined by the agency head, by the contractor that no person or selling agency has been employed or retained to solicit or secure such contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business, for the breach or violation of which warranty the Government shall have the right to annul

such contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

(b) The cost-plus-a-percentage-of-cost system of contracting shall not be used, and in the case of a cost-plus-a-fixed-fee contract the fee shall not exceed 10 per centum of the estimated cost of the contract, exclusive of the fee, as determined by the agency head at the time of entering into such contract (except that a fee not in excess of 15 per centum of such estimated cost is authorized in any such contract for experimental, developmental, or research work and that a fee inclusive of the contractor's costs and not in excess of 6 per centum of the estimated cost, exclusive of fees, as determined by the agency head at the time of entering into the contract, of the project to which such fee is applicable is authorized in contracts for architectural or engineering services relating to any public works or utility project). Neither a cost nor a cost-plus-a-fixed-fee contract not an incentive-type contract shall be used unless the agency head determines that such method of contracting is likely to be less costly than other methods or that it is impractical to secure supplies or services of the kind or quality required without the use of a cost or cost-plus-a-fixed-fee contract or an incentive-type contract. All cost and cost-plus-a-fixed-fee contracts shall provide for advance notification by the contractor to the procuring agency of any subcontract thereunder on a cost-plus-a-fixed-fee basis and of any fixed-price subcontract or purchase order which exceeds in dollar amount either $25,000 or 5 per centum of the total estimated cost of the prime contract; and a procuring agency, through any authorized representative thereof, shall have the

right to inspect the plants and to audit the books and records of any prime contractor or subcontractor engaged in the performance of a cost or cost-plus-a-fixed-fee contract.

SEC. 5. (a) The agency head may make advance payments under negotiated contracts heretofore or hereafter executed in any amount not exceeding the contract price upon such terms as the parties shall agree: *Provided*, That advance payments shall be made only upon adequate security and if the agency head determines that provision for such advance payments is in the public interest or in the interest of the national defense and is necessary and appropriate in order to procure required supplies or services under the contract.

(b) The terms governing advance payments may include as security provision for, and upon inclusion of such provision there shall thereby be created, a lien in favor of the Government, paramount to all other liens, upon the supplies contracted for, upon the credit balance in any special account in which such payments may be deposited and upon such of the material and other property acquired for performance of the contract as the parties shall agree.

SEC. 6. Whenever any contract made on behalf of the Government by the agency head or by officers authorized by him so to do includes a provision for liquidated damages for delay, the Comptroller General on the recommendation of the agency head is authorized and empowered to remit the whole or any part of such damages as in his discretion may be just and equitable.

SEC. 7. (a) The determinations and decisions provided in this Act to be made by the agency head may be made with respect to individual purchases and con-

tracts or with respect to classes of purchases or contracts, and shall be final. Except as provided in subsection (b) of this section, the agency head is authorized to delegate his powers provided by this Act, including the making of such determinations and decisions, in his discretion and subject to his direction, to any other officer or officers or officials of the agency.

(b) The power of the agency head to make the determinations or decisions specified in paragraphs (12), (13), (14), (15), and (16) of section 2 (c) and in section 5 (a) shall not be delegable, and the power to make the determinations or decisions specified in paragraph (11) of section 2 (c) shall be delegable only to a chief officer responsible for procurement and only with respect to contracts which will not require the expenditure of more than $25,000.

(c) Each determination or decision required by paragraphs (11), (12), (13), (14), (15), or (16) of section 2 (c), by section 4 or by section 5 (a) shall be based upon written findings made by the official making such determination, which findings shall be final and shall be available within the agency for a period of at least six years following the date of the determination. A copy of the findings shall be submitted to the General Accounting Office with the contract.

(d) In any case where any purchase or contract is negotiated pursuant to the provisions of section 2 (c), except in a case covered by paragraphs (2), (3), (4), (5) or (6) thereof, the data with respect to the negotiation shall be preserved in the files of the agency for a period of six years following final payment on such contract.

SEC. 8. No purchase or contract shall be exempt from the Act of June 30, 1936, as amended (49 Stat. 2036, as amended by the Act of June 28, 1940, 54 Stat.

681, and by the Act of May 13, 1942, 56 Stat. 277; U. S. C., title 41, secs. 35 to 45) or from the Act of March 3, 1931, as amended (46 Stat. 1494, as amended by the Act of August 30, 1935, 49 Stat. 1011; and by the Act of June 15, 1940, 54 Stat. 399; U. S. C., title 40, secs. 276a to 276a–6), solely by reason of having been entered into pursuant to section 2 (c) hereof without advertising, and the provisions of said Acts and of the Act of June 19, 1912, as amended (37 Stat. 137, as amended by the Act of September 9, 1940, 54 Stat. 884; U. S. C., title 40, secs. 324 and 325a), if otherwise applicable, shall apply to such purchases and contracts.

SEC. 9. As used herein—

(a) The term "agency head" shall mean the Secretary, Under Secretary (if any), or any Assistant Secretary of the Army, of the Navy, or of the Air Force; the Commandant, United States Coast Guard, Treasury Department; and the Executive Secretary, National Advisory Committee for Aeronautics, respectively.

(b) The term "supplies" shall mean all property except land, and shall include, by way of description and without limitation, public works, buildings, facilities, ships, floating equipment, and vessels of every character, type and description, aircraft, parts, accessories, equipment, machine tools and alteration or installation thereof.

SEC. 10. In order to facilitate the procurement of supplies and services by each agency for others and the joint procurement of supplies and services required by such agencies, subject to the limitations contained in section 7 of this Act, each agency head may make such assignments and delegations of procure-

ment responsibilities within his agency as he may deem necessary or desirable, and the agency heads or any of them by mutual agreement may make such assignments and delegations of procurement responsibilities from one agency to any other or to officers or civilian employees of any such agency, and may create such joint or combined offices to exercise such procurement responsibilities, as they may deem necessary or desirable. Appropriations available to any such agency shall be available for obligation for procurement as provided for in such appropriations by any other agency through administrative allotments in such amount as may be authorized by the head of the allotting agency without transfer of funds on the books of the Treasury Department. Disbursing officers of the allotting agency may make disbursements chargeable to such allotments upon vouchers certified by officers or civilian employees of the procuring agency.

SEC. 11. (a) The following Acts are hereby repealed:

Revised Statutes, section 3716 (U. S. C., title 10, sec. 1202);

Revised Statutes, section 3717 (U. S. C., title 41, sec. 9);

Revised Statutes, section 3718 (U. S. C., title 34, sec. 561);

Revised Statutes, section 3719 (U. S. C., title 34, sec. 562);

Revised Statutes, section 3720 (U. S. C., title 34, sec. 563);

Revised Statutes, section 3721, as amended (U. S. C., title 34, secs. 569-570);

Revised Statutes, section 3722 (U. S. C., title 34, sec. 572);

Revised Statutes, section 3723 (U. S. C., title 34, sec. 573);

Revised Statutes, section 3724 (U. S. C., title 34, sec. 574);

Revised Statutes, section 3726 (U. S. C., title 34, sec. 577);

Revised Statutes, section 3727 (U. S. C., title 34, sec. 578);

Revised Statutes, section 3729 (U. S. C., title 34, sec. 579);

Act of June 14, 1878, Numbered 30 (20 Stat. 253; U. S. C., title 34, sec. 565);

Act of March 3, 1893 (ch. 212, sec. 1, 27 Stat. 732; U. S. C., title 34, sec. 566);

Act of March 2, 1907 (ch. 2512, 34 Stat. 1193; U. S. C., title 34, sec. 571);

Act of March 4, 1913 (ch. 148, 37 Stat. 904; U. S. C., title 34, sec. 575);

Act of June 30, 1914 (ch. 130, 38 Stat. 398; U. S. C., title 34, sec. 567);

Act of May 15, 1936 (ch. 400, 49 Stat. 1277; U. S. C., title 10, sec. 1199 (a));

Act of July 13, 1939 (ch. 265, 53 Stat. 1000; U. S. C., title 10, sec. 313).

(b) The following Acts shall not apply to the procurement of supplies or services by the Department of the Army, the Department of the Navy, the Department of the Air Force, the United States Coast Guard, Treasury Department, or the National Advisory Committee for Aeronautics:

Revised Statutes, section 3709, as amended (U. S. C., title 41, sec. 5);

Revised Statutes, section 3735 (U. S. C., title 41, sec. 13);

Act of October 10, 1940, ch. 851, sec. 1, 54 Stat. 1109, as amended (U. S. C., title 41, secs. 6 and 6a).

(c) The following parts of Acts are hereby repealed:

(1) That portion of the Act making appropriations for fortifications, approved February 24, 1891 (26 Stat. 769), relating to "Armament of fortifications", which reads as follows: "*Provided*, That no contract for the expenditure of any portion of the money herein provided, or that may be hereafter provided, for the purchase of steel shall be made until the same shall have been submitted to public competition by the Department by advertisement."

(2) Those portions of the Army Appropriation Acts approved March 2, 1901 (ch. 803, 31 Stat. 905; U. S. C., title 10, sec. 1201); and June 30, 1902 (32 Stat. 514), relating to "Quartermaster's Department, Regular Supplies", which read as follows: "*Provided further*, That hereafter, except in cases of emergency or where it is impracticable to secure competition, the purchase of all supplies for the use of the various departments and posts of the Army and of the branches of the Army service shall only be made after advertisement, and shall be purchased where the same can be purchased the cheapest, quality and cost of transportation and the interests of the Government considered."

(3) That portion of the Army Appropriation Act approved June 12, 1906 (ch. 3078, 34 Stat. 258; U. S. C., title 10, sec. 1205), relating to "Ordinance Department", which reads as follows: "Hereafter the purchase of supplies and the procurement of services for all branches of the Army service may be made in open market, in the manner common among businessmen, when the aggregate of the amount required does not

exceed five hundred dollars; but every such purchase exceeding one hundred dollars shall be promptly reported to the Secretary of War for approval, under such regulations as he may prescribe."

(4) That portion of the Army Appropriation Act, approved May 11, 1908 (ch. 163, 35 Stat. 125; U. S. C., title 10, sec. 1199), relating to "Ordnance Department", which reads as follows: "Whenever proposals are invited for the furnishing of articles of ordnance property, the character of which or the ingredients thereof are of such a nature that the interests of the public service would be injured by publicly divulging them, the Chief of Ordnance is authorized to purchase such articles in such manner as he may deem most economical and efficient."

(5) That portion of the War Department Appropriation Act, approved May 15, 1936 (49 Stat. 1299), relating to "Arms, uniforms, equipment, and so forth, for field service, National Guard", which reads as follows: "*Provided*, That specifications for motor vehicles, which shall be so drawn as to admit of competition, shall to the extent otherwise practicable conform with the requirements of the National Guard."

(d) All other laws and parts of laws to the extent that they are inconsistent with this Act are hereby repealed.

SEC. 12. The Secretary of the Navy shall have the same authority with respect to contracts of the Department of the Navy as the Secretary of the Army has with respect to contracts of the Department of the Army under the Act of April 10, 1878, as amended (20 Stat. 36, as amended by the Act of March 3, 1883, 22 Stat. 487; U. S. C., title 5, sec. 218). The Secretary of the Army and the Secretary of the Air Force shall have the same authority with respect to emergency

purchases of war material abroad as the Secretary of the Navy has with respect to such purchases under the Act of June 30, 1914 (38 Stat. 399; U. S. C., title 34, sec. 568).

SEC. 13. This Act shall become effective ninety days after the date of enactment.

Approved February 19, 1948.

LANHAM ACT, 54 STATUTES 1125, CHAPTER 862

To expedite the provision of housing in connection with national defense, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. In order to provide housing for persons engaged in national-defense activities, and their families, in those areas or localities in which the President shall find that an acute shortage of housing exists or impends which would impede national-defense activities and that such housing would not be provided by private capital when needed, the Federal Works Administrator (hereinafter referred to as the 'Administrator') is authorized:

"(a) To acquire prior to the approval of title by the Attorney General (without regard to sections 1136, as amended, and 3709 of the Revised Statutes) improved or unimproved lands or interests in lands by purchase, donation, exchange, lease (without regard to section 322 of the Act of June 30, 1932 (47 Stat. 412), as amended, the Act of March 3, 1877 (19 Stat. 370), or any time limit on the availability of funds for the payment of rent), or condemnation (including proceedings under the Acts of August 1, 1888 (25

Stat. 357), March 1, 1929 (45 Stat. 1415), and February 26, 1931 (46 Stat. 1421)).

"(b) By contract or otherwise (without regard to sections 1136, as amended, and 3709 of the Revised Statutes, section 322 of the Act of June 30, 1932 (47 Stat. 412), or any Federal, State, or municipal laws, ordinances, rules, or regulations relating to plans and specifications or forms of contract, the approval thereof or the submission of estimates therefor) prior to the approval of title by the Attorney General to make surveys and investigations, plan, design, construct, remodel, extend, repair, or demolish structures, buildings, improvements, and community facilities, on lands or interests in lands acquired under the provisions of subsection (a) hereof or on other lands of the United States which may be available (transfers of which for this purpose by the Federal agency having jurisdiction thereof are hereby authorized notwithstanding any other provisions of law), provide proper approaches thereto, utilities, and transportation facilities, and procure necessary materials, supplies, articles, equipment, machinery, and do all things necessary in connection therewith to carry out the purposes of this Act: *Provided*, That the cost-plus-a-percentage-of-cost system of contracting shall not be used, but this proviso shall not be construed to prevent the use of the cost-plus-a-fixed-fee form of contract: *Provided*, That the cost per family dwelling unit shall not exceed an average of $3,000 for those units located within the continental United States nor an average of $4,000 for those located elsewhere, and the cost of no family dwelling unit shall exceed $3,950 within the continental United States or $4,750 elsewhere, exclusive of expenses of administration, land acquisition, public utilities, and community facilities,

and the aggregate cost of community facilities shall not exceed 3 per centum of the total cost of all projects.

"SEC. 2. As used in this Act (a) the term 'persons engaged in national-defense activities' shall include (1) enlisted men in the naval or military services of the United States; (2) employees of the United States in the Navy and War Departments assigned to duty at naval or military reservations, posts, or bases; (3) workers engaged or to be engaged in industries connected with and essential to the national defense; (b) the term 'Federal agency' means any executive department or office (including the President), independent establishment, commission, board, bureau, division, or office in the executive branch of the United States Government, or other agency of the United States, including corporations in which the United States owns all or a majority of the stock, directly or indirectly.

"SEC. 3. The sum of $150,000,000, to remain available until expended, is hereby authorized to be appropriated to carry out the purposes of this Act in accordance with the authority therein contained and for administrative expenses in connection therewith: *Provided, however,* That the Administrator is authorized to reimburse, from funds which may be appropriated pursuant to the authority of this Act, the sum of $3,300,000 to the emergency funds made available to the President under the Act of June 11, 1940, entitled 'An Act making appropriations for the Navy Department and the naval service for the fiscal year ending June 30, 1941, and for other purposes' (Public, Numbered 588), and the sum of $6,700,000 to the emergency funds made available to the President

under the Military Appropriation Act, 1941, approved June 13, 1940 (Public, Numbered 611):

"SEC. 4. When the President shall have declared that the emergency declared by him on September 8, 1939, to exist, has ceased to exist (a) the authority contained in section 1 hereof shall terminate except with respect to contracts on projects previously entered into or undertaken and court proceedings then pending, and (b) property acquired or constructed under this Act shall be disposed of as promptly as may be advantageous under the circumstances and in the public interest.

"SEC. 5. Where any Federal agency has funds for the provision of housing in connection with national-defense activities it may, in its discretion, make transfers of those funds, in whole or in part, to the Administrator, and the funds so transferred shall be available for, but only for, any or all of the objects and purposes of and in accordance with all the authority and limitations contained in this Act, and for administrative expenses in connection therewith.

"SEC. 6. Moneys derived from rental or operation of property acquired or constructed under the provisions of this Act shall be returned to the appropriation authorized by this Act and shall be available for expenses of operation and maintenance including administrative expenses in connection therewith, and the unobligated balance of the moneys so deposited shall be covered into the Treasury at the end of each fiscal year as miscellaneous receipts.

"SEC. 7. Notwithstanding any other provisions of law, whether relating to the acquisition, handling, or disposal of real or other property by the United States or to other matters, the Administrator, with respect to any property acquired or constructed under the provi-

sions of this Act, is authorized by means of Government personnel, selected qualified private agencies, or public agencies (a) to deal with, maintain, operate, administer, and insure; (b) to pursue to final collection by way of compromise or otherwise, all claims arising therefrom; (c) to rent, lease, exchange, sell for cash or credit, and convey the whole or any part of such property and to convey without cost portions thereof to local municipalities for street or other public use: *Provided*, That any such transaction shall be upon such terms, including the period of any lease, as may be deemed by the Administrator to be in the public interest: *Provided further*, That the Administrator shall fix fair rentals, on projects developed pursuant to this Act, which shall be within the financial reach of persons engaged in national defense: *Provided further*, That any lease authorized hereunder shall not be subject to the provisions of section 321 of the Act of June 30, 1932 (47 Stat. 412).

"SEC. 8. In carrying out the provisions of this Act the Administrator is authorized to utilize and act through the Federal Works Agency and other Federal agencies and any local public agency, with the consent of such agency, and any funds appropriated pursuant to this Act shall be available for transfer to any such agency in reimbursement therefor. Nothing in this Act shall be construed to prevent the Administrator from employing or utilizing the professional services of private persons, firms, or corporations.

"SEC. 9. The Administrator may enter into any agreements to pay annual sums in lieu of taxes to any State or political subdivision thereof, with respect to any real property acquired and held by him under this Act, including improvements thereon. The amount so

paid for any year upon any such property shall not exceed the taxes that would be paid to the State or subdivision, as the case may be, upon such property if it were not exempt from taxation.

"SEC. 10. Notwithstanding any other provision of law, the acquisition by the Administrator of any real property pursuant to this Act shall not deprive any State or political subdivision thereof of its civil and criminal jurisdiction in and over such property, or impair the civil rights under the State or local law of the inhabitants on such property.

"SEC. 11. The Administrator is authorized to make such rules and regulations as may be necessary to carry out the provisions of this Act, and shall establish reasonable standards of safety, convenience, and health.

"SEC. 12. Notwithstanding any other provision of law, the wages of every laborer and mechanic employed on any construction, repair or demolition work authorized by this Act shall be computed on a basic day rate of eight hours per day and work in excess of eight hours per day shall be permitted upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. Not less than the prevailing wages shall be paid in the construction of defense housing authorized herein.

"SEC. 13. If any provision of this Act, or the application thereof to any persons or circumstances, is held invalid, the remainder of this Act, or application of such provision to other persons or circumstances shall not be affected thereby.

"SEC. 14. At the beginning of each session of Congress, the Administrator shall make to Congress a

full and detailed report covering all of the transactions authorized hereunder.

"Approved, October 14, 1940."

R.S. 355, AS AMENDED BY ACT OF OCTOBER 9, 1940, 54 STAT. 1083

To amend section 355 of the Revised Statutes, as amended, to authorize the Attorney General to approve the title to low-value lands and interests in lands acquired by or on behalf of the United States subject to infirmities, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 355 of the Revised Statutes of the United States, as amended, is hereby amended to read as follows:

"'SEC. 355. No public money shall be expended upon any site or land purchased by the United States for the purposes of erecting thereon any armory, arsenal, fort, fortification, navy yard, custom-house, lighthouse, or other public building of any kind whatever, until the written opinion of the Attorney General shall be had in favor of the validity of the title.

"'Notwithstanding the provisions of this or any other law, whenever the average value of any lands or interests in land to be acquired by or on behalf of the United States under a single option or contract of sale does not exceed $10 per acre (hereinafter referred to as "low-value lands"), the title may be accepted subject to such infirmities as, in the opinion of the Attorney General, may, without jeopardizing the interests of the United States, be left for removal by condemnation or other appropriate proceedings, if and when necessary: *Provided*, That the total value of any lands

or interests to be acquired under a single option or contract of sale subject to an infirmity does not exceed $3,500. No public money shall hereafter be expended for the acquisition of such low-value lands or interests in land by or on behalf of the United States for any purpose until the written opinion of the Attorney General has been had approving the title subject, if expedient, to infirmities as herein provided. However, no money in excess of $2,500 shall be expended for the construction of buildings, works, or other improvements (except roads, trails, and fire-protection improvements) on any site, tract, or parcel of land the title to which is subject to infirmities, until the written opinion of the Attorney General in favor of the validity of the title has been had as in the case of other lands. For the purpose of this Act, values of lands and interests in land shall be determined by the consideration paid or to be paid.

"The Attorney General is hereby authorized to approve the title to easements or rights-of-way to be acquired by or on behalf of the United States, subject to such infirmities as, in his opinion, will not jeopardize the interests of the United States.

"Nothing in this Act shall be construed to limit the authority now or hereafter delegated to any officer in exercising the power of eminent domain for or on behalf of the United States, to take title to or possession of or to expend money for or upon any land or interest in land, or to expend money as security for an ultimate award in advance of final judgment in any proceedings to determine just compensation; nor shall this Act be construed to preclude any acquiring agency from expending money for the erection of any preliminary and temporary structure upon any land.

"The head or other authorized officer of any department, independent establishment, or agency, shall procure any evidence of title which the Attorney General may deem necessary, and the expenses of procurement, except where otherwise authorized by law or provided by contract, may be paid out of the appropriations for the acquisition of land or out of the appropriations made for the contingencies of the acquiring department, independent establishment, or agency.

"The Attorney General may, in his discretion, base any opinion as to title required either by this Act or any other law upon either or both of the following: Certificates of title of title companies or such evidence of title as he may deem satisfactory.

"The foregoing provisions of this section shall not be construed to affect in any manner any existing provisions of law which are applicable to the acquisition of lands or interests in land by the Tennessee Valley Authority; and nothing in this section shall be construed to affect in any manner any authority which the Secretary of War, the Chief of Engineers, or the Secretary of the Interior have under the provisions of law in force on the date this section as amended takes effect with respect to the approval by them of title to land or interests in land acquired by the War Department or the Department of the Interior, as the case may be. Nor shall the foregoing provisions of this section, or the provisions of any other law, be construed to require any opinion of the Attorney General in connection with the acquisition or improvement of easements and rights-of-way for military or naval purposes; or for the acquisition or improvement of easements and rights-of-way by the Department of Agriculture for forest and other conservation purposes

where the cost of any such easement of right-of-way acquired under a single instrument of conveyance and the cost of any improvement thereon does not exceed $2,500; and the Attorney General may, in his discretion, waive the requirement for his opinion in connection with the acquisition or improvement of easements and rights-of-way for other purposes when, in his opinion, such waiver will not jeopardize the interests of the United States.

"Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required; but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure from the State in which any lands or interests therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, exclusive or partial, not theretofore obtained, over any such lands or interests as he may deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such other manner as may be prescribed by the laws of the State where such lands are situated. Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted."

"Approved, October 9, 1940."

APPENDIX C

State Milk Stabilization Statutes

Alabama Code of Alabama, 1955 Revision, Title 22, Sec. 205 et seq.

Arkansas Stats. 1955, Secs. 70-701 et seq.

California Agricultural Code, Division 6, Chapter 17, Sections 4200 through 4420, inc.

Connecticut Connecticut General Statutes 1958 Revision, Title 22, Chapter 431, Secs. 205 et seq.

Florida Florida Statutes, 1957 Revision, Chapter 501, Secs. 501.01 et seq.

Georgia Code of Georgia Annotated, 1957 Revision, Title 42, Secs. 42.524 et seq.

Louisiana West's Statutes Annotated, 1958 Revision, Title 40, Secs. 940.1 et seq.

Maine Revised Statutes 1957 Supplement, Chapter 33, Secs. 1 et seq.

Massachusetts Annotated Laws 1958, Chapter 94A, Secs. 1 et seq.

Montana Revised Code 1957 Supplement, Title 27, Secs. 27-400 et seq.

Nevada Revised Statutes 1958, Secs. 584.350 et seq.

New Hampshire Revised Statutes 1957, Title XIV, Chapter 183, Secs. 183.1 et seq.

New Jersey Annotated Statutes 1958, Title 4, Secs. 4.12A-1 et seq.

New York New York Consolidated Laws Annotated, Book 2B, 1958 Revision, Secs. 253 et seq.

North Carolina North Carolina General Statutes: 1957 Revision, Article 28B, Secs. 106.266.6 et seq.

Oregon Oregon Laws, 1961, Ch. 529.

South Carolina Code of South Carolina, 1952, Secs. 32-1634, et seq.

Pennsylvania Purdom's Pennsylvania Annotated Statutes, 1958 Revision, Title 31, Secs. 700J-103 et seq.

Rhode Island General Laws of Rhode Island 1958, Title 21, Secs. 21-4-1 et seq.

Vermont Vermont Statutes Annotated 1948, Title 6, Secs. 2502 et seq.

Virginia Code of Virginia 1958, Title 3, Secs. 3-346 et seq.

Washington Session Laws of Washington 1961, Ch. 298.

State milk stabilization statutes have been held constitutionally valid in 16 states:

Alabama:

Franklin v. *State ex rel. Alabama State Milk Control Board*, 1936, 232 Ala. 637, 169 So. 295

California:

Jersey Maid Milk Products Co. v. *Brock*, 1939, 13 Cal. 2d 620, 91 P. 2d 577

Connecticut:

State v. *Stoddard*, 1940, 126 Conn. 623, 13 A. 2d 586

Florida:

Shiver v. *Lee*, Fla. 1956, 89 So. 2d 318

Indiana:

Albert v. Milk Control Board, 1936, 210 Ind. 283, 200 N.E. 688

Louisiana:

Schwegmann Brothers Giant Super Markets v. McCrory, 1959, 237 La. 768, 112 So. 2d 606

Michigan:

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New Hampshire:

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New Jersey:

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North Carolina:

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Oregon:

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Pennsylvania:

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Virginia:

Highland Farms Dairy v. *Agnew*, 300 U S 608

Reynolds v. *Milk Commission of Virginia*, 1935, 163 Va. 957, 179 S.E. 507

Wisconsin:

State ex rel. Finnegan v. *Lincoln Dairy Co.*, 1936, 221 Wis. 1, 265 N.W. 197, 851

APPENDIX D

LEGISLATIVE HISTORY OF CONSTITUTION ARTICLE I, SECTION 8, CLAUSE 17

The original draft of section 17 submitted to the Constitutional Convention on September 5, 1787, would have granted the Congress power "to exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may by Cession of particular States and the acceptance of the Legislature become the seat of the Government of the U—S— and to exercise like authority over all places purchased for the erection of Forts, Magazines, Arsenals, Dock-Yards, and other needful buildings". Debates on the Confederation and Constitution, Elliott, Vol. 5, p. 510-511; The Records of the Federal Convention, Farrand, Vol. 2, p. 509. In debate Massachusetts delegate Elbridge Geary raised the objection that the power to acquire sites without state consent "... might be made use of to enclave any particular

state by buying up its territory; and that the strongholds proposed would be means of owing the state into an undue obedience to the general government." Elliott, op cit, p. 511; Farrand, op cit, p. 510. In response to this objection, the Convention added the requirement that the purchase of forts and arsenals be with "the consent of the Legislature of the State in which the same shall be." Elliott, op cit, pp. 511-512; Farrand, op cit, p. 510.

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